U.S. Customs Service

February 28, 2001

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

U.S. Customs Service

General Notices

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN KNIT TANK STYLED GARMENTS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter and revocation of treatment relating to the classification of certain knit tank styled garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain knit tank styled garments. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 13, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textiles Branch: (202) 927-2339.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification of certain knit tank styled garments. Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY B86925, dated July 11, 1997, certain knit tank styled garments were classified under subheading 6109.10.0037, HTSUS, which provides for *inter alia* women's underwear tank tops. NY B86925 is set forth as "Attachment A" to this document.

Customs has determined that certain knit tank styled garments

are classifiable under subheading 6109.10.0060, HTSUS, which provides for women's knit tank tops. Proposed HQ 962021 revoking NY B86925 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY B86925, as appropriate, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 962021, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Please note that Attachment B was inadvertently published in the CUSTOMS BULLETIN of February 14, 2001, Vol. 35, No. 7, without the instant notice and did not have the effect of a final modification letter.

Dated: February 22, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

July 11, 1997
CLA-2-61:RR:NC:TA:354 B86925
Category: Classification
Tariff No. 6108.21.0010; 6109.10.0037; 9802.00.8065

MS. MAUREEN E. GRAY
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, Pennsylvania 19153

Re: The tariff classification and country of origin marking of ladies underwear made from Canadian fabric which is cut into component parts in the U.S. and assembled in the Dominican Republic.

DEAR MS. GRAY:

In your letter dated June 20, 1997, filed on behalf of Alpha Mills, you requested a classification and country of origin marking ruling. The provided samples will be returned as per your request.

Four samples of ladies underwear constructed of a fine gauge knitted 95% cotton 5% spandex fabric were submitted for review. Style 003621 consists of a undershirt and matching bikini panties in a solid white color. The undershirt features a scoop neckline and back with elasticized trim, elasticized spaghetti straps, and a hemmed bottom. The bikini panty features an elasticized waistband and leg openings.

Style 003671 consists of a undershirt and matching boy cut panty brief in a striped pattern. With the exception of the striped pattern fabric, this undershirt is identical to the style 003621 undershirt. The boy cut panty brief features an elasticized waistband and leg openings.

The applicable subheading for the style 003621 and 003671 panties will be 6108.21.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: briefs and panties: of cotton: women's. The duty rate will be 8 percent *ad valorem*.

The applicable subheading for the style 003621 and 003671 undershirts will be 6109.10.0037, HTS, which provides for T-shirts, singlets, tank tops and similar garments, knitted or crocheted: of cotton . . . Women's or girls': underwear. The duty rate will be 19.6 percent *ad valorem*.

Styles 003621 and 003671 fall within textile category designation 352. Based upon international textile trade agreements products of the Dominican Republic are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

According to your request, the importer intends to import Canadian fabric into the United States where it will be cut into component parts. The component parts will be forwarded to the Dominican Republic for assembly into the underwear sets. Once assembled, the sets will be imported into the United States. You have inquired about the articles eligibility pursuant to bilateral textile agreements for entry under the Special Access Program in connection with the Committee for Implementation of Textile Agreements (CITA) under 9802.00.8015. To qualify for the Special Access Program, all fabric components, with the exception of findings, trimmings and certain elastic strips not exceeding 25 percent of the cost of the components of the assembled product, must be U.S. formed and cut. The Canadian origin fabric of the instant shipment imported into the U.S., would not qualify under 9802.00.8015. Additional information and requests for "The Guide to the Caribbean Basin Initiative" may be directed to U.S. Customs Service CBI/Andean Help Desk, P.O. Box 52-3215, Miami, Florida 33152-3215, telephone (305) 869-2804 or 2815.

However, effective July 1, 1996, under the new rules of origin, as set forth in section 102.21, Customs Regulations (19 C.F.R. §102.210), foreign fabric which is cut into components in the United States does not become a product of the United States because the cutting to size or shape no longer confers origin. But the new textile rules allow the duty exemption previously accorded these goods under 9802.00.80 to continue.

Section 10.25 of the Customs Regulations which implements the duty allowance provided under section 334(b)(4)(A) for textile components cut in the U.S. from foreign fabric, Customs stated:

> Under section 334(b)(4), where goods are assembled abroad from components cut in the United States from foreign fabric (even though under section 334 rules the cut components are not products of the United States and the assembling country is the country of origin), the assembled goods, when imported into the United States, will continue to receive the same duty treatment presently accorded to such goods under subheading 9802.00.80, HTSUS...section 334(b)(4) serves to preserve a tariff treatment that otherwise would no longer be available under the section 334 origin rules...Therefore, Customs will allow entry of goods assembled abroad from textile components cut to shape from foreign fabric in the U.S. to be made under subheading 9802.00.8065, but only for the purpose of calculating the

duty allowance under this subheading. Customs will treat these textile components as if they were U.S. fabricated components.

The allowance of entry under subheading 9802.00.80 should not be interpreted as a determination of the country of origin of these cut components. The determination of the country of origin of textile components cut in the U.S. from foreign fabric will be made under a general application of the section 334 rules of origin.

Accordingly, the instant shipment will be eligible for a partial duty allowance under subheading 9802.00.80 pursuant to section 10.25, but the country of origin of the shipment, for quota, marking and other general origin purposes will be the Dominican Republic, the country where the components are assembled.

The marking statute (19 U.S.C. 1304) requires articles of foreign origin imported into the U.S. to be marked to indicate the name of the country of origin of the article. In your letter, you suggested the following markings for the underwear: "Assembled in Dominican Republic" or "Made in Dominican Republic". Either of the aforementioned statements would be appropriate markings.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brian Burtnik at 212-466-5880.

PAUL K. SCHWARTZ,
Chief, Textiles & Apparel Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:TE 962021 SS
Category: Classification
Tariff No. 6109.10.0060

GAIL CUMINS, ESQUIRE
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: Request for Reconsideration of New York Rulings B88682 and C82136; Tank Styled Garments; Women's Cotton Knit Tank Tops, Subheading 6109.10.0060, HTSUSA; Not Underwear; Not Subheading 6109.10.0037, HTSUSA; Modification of NY B86925.

DEAR MS. CUMINS:

This is in response to your letter dated July 6, 1998, on behalf of your client, Ariela-Alpha International LLC and its sister companies, requesting reconsideration of New York Ruling Letter (NY) B88682, dated September 4, 1997, and NY C82136, dated December 18, 1997, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of three styles of women's cotton knit tank styled garments. Physical samples of the three garments were provided with the request for reconsideration.

A meeting at Customs Headquarters was held with counsel and a representative of the importer on March 9, 2000. Additional submissions, dated April 17, 2000, and June 19, 2000, were submitted. Additional samples were received in connection with the June 19, 2000, submission.

This letter is to inform you that after review of those rulings, it has been

determined that the classification of the garments in subheading 6109.10.0060, HTSUSA, is correct. Classification of the garments under subheading 6109.10.0037, HTSUSA, is incorrect. As such, NY B86925, dated July 11, 1997, is modified pursuant to the analysis that follows below.

Facts:

The three garments which are the subject of this request are identified by the importer as Style 003621, Style 003670 and Style 003671. All three styles have a coordinating panty. The classification of the panty is not at issue.

Style 003621 is a white tank styled garment constructed of 95 percent cotton and 5 percent spandex jersey knit fabric. The garment features elasticized satin trim on the U-shaped front and rear necklines and elasticized adjustable shoulder straps. The bottom of the garment is hemmed.

Style 003670 is a tank styled garment constructed of 100 percent cotton knit fabric. The white garment features a brightly printed horizontal rainbow across the bust area, elasticized satin trim on the U-shaped front and rear necklines and elasticized adjustable shoulder straps. The bottom of the garment is hemmed.

Style 003671 is a tank styled garment constructed of 95 percent cotton 5 percent spandex jersey knit fabric. The pink striped garment features elasticized satin trim on the U-shaped front and rear necklines that extend to form shoulder straps. The bottom of the garment is hemmed.

In NY B86925, dated July 11, 1997, styles 003621 and 003671 were classified as underwear under subheading 6109.10.0037, HTSUSA. However, in NY B88682, dated September 4, 1997, style 03621 was re-classified as a tank top under subheading 6109.10.0060, HTSUSA. Furthermore, in NY C81236, dated December 18, 1997, style 003671 was re-classified and style 003670 was classified as tank tops under subheading 6109.10.0060, HTSUSA.

The importer asserts that all three tank styled garments should be classified as underwear under subheading 6109.10.0037, HTSUSA. The importer submits that the physical characteristics of the garments, the environment of sale, advertising and marketing material, recognition in the trade of virtually identical merchandise and documents incidental to purchase and sale support the contention that the garments are underwear.

Issue:

Whether the three tank styled garments are classifiable as underwear under subheading 6109.10.0037, HTSUSA, or as tank tops under subheading 6109.10.0060, HTSUSA?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, and any related subheading notes and, *mutatis mutandis*, to the GRIs. This matter is governed primarily by GRI 6, in that the choice in classification is between two subheadings. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

There is no disagreement as to the classification of the subject merchandise at the 8-digit level. Subheading 6109.10.00, HTSUSA, provides for "T-shirts, singlets, tank tops and similar garments, knitted or crocheted: of cotton." The sole issue in this case is whether the merchandise is classified under subheading 6109.10.00**37**,

HTSUSA, or 6109.10.00**60**, HTSUSA. Subheading 6109.10.0037, HTSUSA, provides for women's underwear. Subheading 6109.10.0060 provides for women's non-underwear tank tops. Thus, the crux of the question in this case is whether or not the garments are underwear or outerwear.

Neither the chapter notes nor the EN shed light upon the difference between underwear tank tops and outerwear tank tops. Furthermore, as the term "tank top" is neither defined in the legal notes to the HTSUSA nor in the corresponding EN, we look to the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (1988) ("*Guidelines*") for assistance. The *Guidelines* reference to the term "tank top" describes a garment which is:

> ... sleeveless with oversized armholes, with or without a significant drop below the arm. The front and the back may have a round, V, U, scoop, boat, square or other shaped neck which must be below the nape of the neck. The body of the garment is supported by straps not over two inches in width reaching over the shoulder. The straps must be attached to the garment and not be easily detachable. Bottom hems may be straight or curved, side-vented, or of any other type normally found on a blouse or shirt, including blouson or drawstring waists or an elastic bottom. The following features would preclude a garment from consideration as a tank top:
>
> 1) pockets, real or simulated, other than breast pockets;
> 2) any belt treatment including simple loops;
> 3) any type of front or back neck opening (zipper, button, or otherwise).

The garments at issue are sleeveless, feature an U-shaped neck below the nape of the neck, are supported by attached straps not over two inches in width, and are hemmed at the bottom. Furthermore, the garments at issue do not have any features which would preclude their classification as tank tops.

The term "underwear" is also not defined by the HTSUSA or EN. The *Guidelines* define "underwear" as follows:

> The term "underwear" refers to garments which are ordinarily worn under other garments and are not exposed to view when the wearer is conventionally dressed for appearance in public, indoors or out-of-doors. Whether or not a garment is worn next to the body of the wearer is not a determinant; babies' diapers, for example, are so worn, as are bathing suits. Neither of these garments are customarily worn under other garments, and they are not underwear.
>
> It should be noted that in distinguishing underwear, it is generally agreed that sleeveless tops with lace inserts or lace edgings are predominantly worn as underwear.

In *Children's Hose Inc. v. United States*, 55 Cust. Ct. 6, 8, C.D. 2547 (1965), the court examined the term "underwear" and concluded that underwear is a garment of an intimate nature which is worn under an outer garment and not meant to be seen when worn. Customs has stated that in order to be classified as women's underwear, the garments at issue must belong to a class or kind of goods for which the principal use is as women's underwear, *i.e.*, the principal use must be for wear next to the skin and under other clothing by women in the United States as underwear. *See* HQ 957068, October 11, 1994.

Customs acknowledges that there are some garments styled like tank tops that may be used by some women as underwear. However, Customs does not believe that the fashionable cotton tank tops at issue are principally used in the United States by women as underwear. The garments are readily identifiable as outerwear tank tops. Customs believes that women, particularly young women and teens, will wear these garments as outerwear. This belief is based not only on the garments before us, but on the knowledge that it is fashionable to wear tank tops

as outerwear and that this trend is well known in the trade.

In past rulings, Customs has pointed out that the merchandise itself may be strong evidence of use. Citing *Mast Industries v. United States*, 9 CIT 549, 552 (1985), aff'd 76 F. 2d 1144 (1986), citing *United States v. Bruce Duncan Co.*, 50 CCPA 43, 46, C.A.D. 817 (1963). Based on our examination of the garments supplied, we find that they are outerwear garments for wear other than for the primary purpose of wearing underneath of other garments and not exposed to view. Nothing provided suggests the garments are designed or intended for wear underneath of other garments. These tank tops are ordinarily worn on their own or coupled with an open sweater exposed to view. Their fabric, construction and design are suitable for the type of activities expected of outerwear. We find that these tank tops are worn to be seen. In *Hampco Apparel, Inc. v. United States*, 12 Ct. Int'l Trade 92 (1988), the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function." Although the subject garments could physically be worn under other garments, it is our opinion that their principal use is for outerwear.

The importer suggests that the appearance and construction features of the garments at issue, including the "underwear weight" fabric, elasticized trim, and snug-fit construction, make them designed for use as underwear. In addition, the importer suggests that the narrow "lingerie-type straps" are characteristic of underwear. We do not agree that the weight of the fabric, elasticized trim, snug fit and narrow straps are limited to underwear and are not found in outerwear. Neither the features on the garments nor the overall appearance of the garments themselves are absolute indicators of underwear. The appearance of these garments is as outerwear.

Furthermore, nothing about the design or appearance of the subject garments makes them unsuitable for use as outerwear. We find that the novelty prints and patterns on the tank tops lend themselves more to use as outerwear. Of more significance is the weight and sheerness of the fabric. The fabric weight and opaqueness make the garments indistinguishable from garments marketed, advertised, sold and used as outerwear. White is suitable and even traditional as underwear, however, it is also very popular for outerwear and leisurewear. The stripes and multi-color printing make those styles indistinguishable from outerwear. Furthermore, the adjustable straps allow the tank tops to be adjusted for a proper and secure fit. The Customs National Import Specialist for this merchandise provided us with advertising materials which demonstrate that the trend today for the type of garments in question is for use as outerwear. Taking into consideration all of the information before us, especially the garments themselves, Customs believes these garments are properly classified as outerwear garments, not as underwear.

The importer suggests that these garments should be classified as underwear because they are designed, marketed and sold for use as underwear. In support, the importer states that it and its sister companies are engaged in the production and sale of fine lingerie. The importer submitted a copy of Alpha-Syrlay's catalogue which depicts a line of lingerie. However, the catalogue does not contain any information on the tank tops at issue. An affidavit from the Director of Designing at Ariela-Alpha International LLC states that the garments at issue were designed to answer the current trend for undershirt and panty sets. The affidavit does not address the current trend for outerwear tank tops or why the garments would not be worn as outerwear. The importer states that the garments are merchandised and displayed as underwear and are sold to major retailers and specialty stores who offer these garments to their customers as underwear. In an attempt to establish that the intimate apparel industry perceives and merchandises the subject tank tops as underwear, the importer submitted statements from buyers stating that the garments were purchased for sale in their intimate apparel section and are known in the trade as underwear. Although the style numbers do not

match, the importer has submitted an affidavit stating that the numbers on the documents are the retailers style numbers. However, due to discrepancies in the documents, we believe the commitments may cover different styles than the styles at issue. The importer has also submitted various advertisements in an effort to show how these garments are advertised as underwear. Unfortunately, none of the advertisements depict the styles at issue. The importer has also submitted photographs taken on the selling floors. Although we agree that the photographs reflect tank tops and matching panty sets as being offered in the lingerie department along side other underwear garments, the photographs are not of the styles at issue.

Customs does not find the fact that the garments at issue here may be sold to intimate apparel departments of particular significance. Internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States*, 16 Ct. Int'l Trade 407 (May 21, 1992). Customs has long acknowledged that intimate apparel/sleepwear departments often sell a variety of merchandise besides intimate apparel, including garments intended to be worn as outerwear. *See* HQ 955341, dated May 12, 1994; HQ 963442, dated July 9, 1999; HQ 960865, dated July 15, 1999 and HQ 960866, dated July 15, 1999. Furthermore, Customs has previously ruled that classification of merchandise is not governed by the department in which the garment is sold or whether or not it is merchandised with matching pants. HQ 087772, dated November 27, 1990. Although court cases have given credence to the manner in which an article is designed, manufactured, and marketed; the court has refrained from stating that information concerning design, manufacturing, and marketing was dispositive of tariff classification. *See Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 144 (CAFC, 1986); *St. Eve International, Inc. v. United States*, 11 Ct. Int'l Trade 224 (1987); and *Inner Secrets/Secretly Yours, Inc. v. United States*, 885 F. Supp. 248 (1995).

Notwithstanding the advertisements and store pictures presented it is common knowledge that savvy shoppers will purchase garments suitable for outerwear and indistinguishable from garments sold in sportswear departments in lingerie/intimate apparel departments. A soft, comfortable tank top sold in the intimate apparel department is less expensive than a tank top sold in the sportswear department. The National Import Specialist for this merchandise advises that a camisole suitable for wear with a jacket or suit will cost two or three times as much in the sportswear department. We are aware of various advertisements for similarly designed tank styled tops which are marketed and meant to be worn as outerwear. Consumers expect to find these garments in various departments, including the intimate apparel department of stores, and will, despite in which department the garment is sold, still use these garments as tank tops to be seen and worn as outerwear. Thus, we find the fact that the tank tops are marketed in the intimate apparel department an unpersuasive argument that the tank tops are underwear or principally used as underwear by women.

The subject garments are distinguishable from tank tops previously classified as underwear. In HQ 084110, dated July 31, 1989, and HQ 951809, dated September 8, 1992, Customs classified a tank top or "camisole-type top" constructed of sheer fabric and scattered pointill openwork as underwear under subheading 6109.10.0037, HTSUSA. Specifically referring to the sheerness of the fabric and the scattered openwork, Customs stated that the garments would predominately be worn as underwear based on the construction and appearance of the garments. In HQ 089083, dated July 2, 1991, Customs classified a camisole featuring a scalloped man-made fiber lace-like insert at the top as underwear under subheading 6109.10.0037, HTSUSA. Customs believed that the garment was designed as an underwear camisole and reasoned that the scalloped-like insert on the front was of the type often seen on underwear camisoles. *See also* HQ 087675, dated February 4, 1991 (camisole classified as underwear where Customs believed that garments were principally used as undergarments in place of a brassiere or over one as a slip). Thus, we find that the subject tank tops do not share the same characteristics as tank tops previously classified as underwear.

Rather, the subject tank tops are similar to garments previously classified as outerwear tank tops. In Port Ruling Letter (PD) 087076, dated February 23, 1999, Customs classified a woman's tank top described as featuring "a scoop neckline, elasticized spaghetti straps, elasticized arm and neck openings and a hemmed bottom" under subheading 6109.10.0060, HTSUSA. In NY D86519, dated February 3, 1999, Customs classified a woman's tank top described as featuring "a straight back; a V-front; spaghetti straps; and a hemmed bottom" as an outerwear tank top under subheading 6109.10.0060, HTSUSA. In HQ 950364, dated January 17, 1992, Customs classified a tank top imported with matching briefs creating an underwear set as an outerwear tank top. Customs acknowledged that the determination would have to be made on a case-by-case basis and emphasized the requirement that underwear is ordinarily worn under other garments and not exposed to view. *See also* HQ 950686, dated May 27, 1992 (tank top imported with panties as an underwear set classified as an outerwear tank top) and HQ 955331, dated April 14, 1994 (tank top classified as outerwear since it fell within description of tank top set forth in the *Guidelines*). In HQ 087483, dated December 19, 1990, Customs classified a woven camisole as outerwear based on the appearance of the garment. Customs stated that the colorful and attractive embroidery was intended to be seen and would be difficult to hide under clothing other than that of very dark and heavy fabrics. *See also* HQ 088330, dated March 26, 1991 (fabric, design and finish of the garment are similar to that of outerwear camisoles worn by women with jackets or alone with slacks or skirt as evening wear). Accordingly, we find that the subject garments are classifiable as outerwear tank tops.

At the meeting on March 9, 2000, counsel advanced the argument that there were differences in specifications for underwear tank tops and outerwear tank tops. However, the supplemental submission dated April 17, 2000, did not establish a difference in standard specifications for underwear and outerwear spaghetti strap styled tank tops. We found the comparison between one style of a spaghetti strap tank top said to be underwear to one style of a traditional styled tank top said to be outerwear to be unpersuasive. Although the submission established that there were different dress forms for sportswear and intimate apparel, we also found the information to be unpersuasive. We noted that the intimate apparel dress form was available in both a "defined (brassiere style)" or "relaxed" version to "accommodate the type of garment to be fitted." Lastly, performance standards from one purchaser did show that underwear must meet more rigorous standards, but we did not find the standards to be controlling in this instance.

In the additional submission dated June 19, 2000, the importer explained that intimate apparel is sized by bra size while sportswear is sized 8–10–12, etc. However, the tank tops at issue are merely sized small–medium–large, etc. The importer also asserted that sportswear is usually a bigger "fit," but in reviewing the information provided, we found the intimate apparel measurements to be slightly larger than the sportswear measurements. Lastly, the importer submitted six styles of spaghetti strap tank tops sold in sportswear departments. It appears that the importer carefully selected six styles that showed a clear contrast to the tank tops at issue. Although we agree that those six styles are clearly outerwear, it does not necessitate a finding that the tank tops at issue are underwear. Customs maintains its belief that the tank tops at issue are virtually indistinguishable from other tank tops sold in the sportswear section not represented by the sampling submitted by the importer.

Holding:

The subject merchandise is classifiable under subheading 6109.10.0060, HTSUSA, textile category 339, which provides for women's cotton knit tank tops. The applicable general column one rate of duty is 17.8 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of

shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

NY B88682 and NY C82136 are hereby affirmed.

NY B86925 is hereby modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF A WOMAN'S WOOL KNIT CARDIGAN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling and revocation of treatment relating to the classification of a woman's wool knit cardigan.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of a woman's wool knit cardigan under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 13, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a woman's wool knit cardigan. Although in this notice, Customs is specifically referring to one ruling Customs Port of New York/Newark Ruling (PD) A86013 dated August 16, 1996, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable

care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In PD A86013, Customs ruled that a woman's wool knit cardigan was classified in subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other, Other: Women's or girls." This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. We have determined that this item should be classified in subheading 6110.10.2030, HTSUSA, which provides for, "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other, Sweaters: Women's."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke PD A86013 dated August 16, 1996, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ 959789 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: February 26, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

August 16, 1996
CLA-2-61:NEW:TCB I:I19 A86013
Category: Classification
Tariff No. 6110.10.2080

MR. WILLIAM ORTIZ
S. J. STILE ASSOCIATES, LTD.
153-66 Rockaway Blvd.
Jamaica, NY 11434

Re: The tariff classification of a woman's wool cardigan from Hong Kong.

DEAR MR. ORTIZ:

In your letter dated, July 23, 1996, on behalf of I.K. L. International, you requested a tariff classification ruling.

A sample was submitted. It is a woman's cardigan designated as style # 60419. It is made of 100 percent wool knit fabric. The fabric contains more ten stitches per two centimeters in the horizontal direction. The cardigan has a full frontal opening, long sleeves and is beaded. As you have requested, the sample garment is being returned.

The applicable subheading for the cardigan will be 6110.10.2080 Harmonized Tariff Schedule of the United States (HTS), which provides for sweaters, . . . and similar articles knitted or crocheted, of wool or fine animal hair other, other, women's or girls'. The rate of duty will be 16.8 percent *ad valorem*.

The Cardigan falls within textile category designation 438. As a product of Hong Kong, this merchandise is currently subject to visa requirements or quota restraints based upon international textile trade agreements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs Office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

KATHLEEN M. HAAGE,
Area Director,
New York/Newark Area.

[ATTACHMENT B]

CLA-2 RR:CR:TE 964517 ASM
Category: Classification
Tariff No. 6110.10.2030

MR. WILLIAM ORTIZ
IMPORT MANAGER
S.J. STILE ASSOCIATES LTD.
153-66 Rockaway Blvd.
Jamaica, NY 11434

Re: Proposed Revocation of PD A86013: Classification of woman's wool knit cardigan.

DEAR MR. ORTIZ:

This is in regard to Customs Port of New York/Newark Ruling (PD) A86013, issued to you on August 16, 1996, by Customs in reply to your request for a tariff classification ruling of a woman's wool knit cardigan. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes PD A86013 by providing the correct classification for the

merchandise. In addition, this is in response to your request on behalf of I.K.L. International, for a reconsideration of PD A86013, which classified a woman's wool knit cardigan under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was submitted to this office for examination.

Facts:

The subject article is identified as a woman's knit cardigan (Style # 60419) of 100 percent wool fiber. The cardigan has a front opening with V-neckline, a single hook and eye closure at the waist, long sleeves, and beading. Based on our current assessment, the knit fabric is comprised of less than nine stitches per two centimeters, measured in the horizontal direction.

In PD A86013 dated August 16, 1996, the subject garment was classified in subheading 6110.10.2080, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other, Other: Women's or girls" with a corresponding textile quota category of 438. This classification was based on the determination that the fabric contained more then ten stitches per two centimeters in the horizontal direction.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. *See*, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

At this time, it is Customs determination that PD A86013, based the classification determination of the subject article on an erroneous stitch measurement of "more than ten stitches per two centimeters in the horizontal direction." In fact, the cardigan has less than nine stitches per two centimeters in the horizontal direction. Statistical Note 3, Chapter 61, HTSUSA, states as follows:

> 3. For purposes of this chapter, statistical provisions for sweaters include garments, whether or not known as pullovers, vests or cardigans, the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimeters measured in the direction the stitches were formed, and garments, known as sweaters, where, due to their construction, the stitches on the outer surface cannot be counted in the direction the stitches were formed.

Thus, at the statistical level, the provision for "Sweaters" under subheading 6110.10.2030, HTSUSA, would include the subject cardigan because it is constructed with fewer than 9 stitches per 2 centimeters.

Holding:

PD A86013 is hereby revoked.

The subject merchandise is correctly classified in subheading 6110.10.2030, HTSUSA, which provides for, "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Other,

Sweaters: Women's." The general column one duty rate is 16.4 percent *ad valorem*. The textile category is 446.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you have your client check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, your client should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF LIQUID FILLED PLASTIC EYE MASKS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the classification of liquid filled plastic eye masks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification of liquid filled plastic eye masks and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before April 13, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification of liquid filled plastic eye masks. Although in this notice Customs is specifically referring to New York Ruling Letters (NY) 869248, NY 864393, and NY A84501, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of sub-

stantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY 869248, dated December 18, 1991, the classification of a product commonly referred to as liquid filled plastic eye masks was determined to be in subheading 1520.90.00, HTSUS. This ruling letter is set forth in "Attachment A" to this document. In NY 864393, dated June 26, 1991, the classification of a product commonly referred to as liquid filled plastic eye masks was determined to be in subheading 3823.90.5050, HTSUS. This ruling letter is set forth in "Attachment B" to this document. In NY A84501, dated June 19, 1996, the classification of a product commonly referred to as liquid filled plastic eye masks was determined to be in subheading 3005.90.5090, HTSUS. This ruling letter is set forth in "Attachment C" to this document. Since the issuance of those rulings, Customs has had a chance to review the classification of this merchandise and has determined that the inconsistent classifications are in error. The correct classification of liquid filled plastic eye masks is in subheading 3924.90.50, HTSUS, which provides for other household and toilet articles, of plastics, other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY 869248, NY 864393, NY A84501, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQs) 964850, 964851 and 964852 (*see* Attachments "D" through "F" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

December 18, 1991
CLA-2-15:S:N:N1:235 869248
Category: Classification
Tariff No. 1520.90.0000

MR. DAVID A. EISEN
SIEGEL, MANDELL & DAVIDSON, P.C.
One Astor Plaza
1515 Broadway
New York, N.Y. 10036

Re: The tariff classification of "Tranquil Moments Holiday Relaxation Kit" from China/Taiwan.

DEAR MR. EISEN:

In your letter dated November 7, 1991, you requested a tariff classification ruling on behalf of your client Avon Products, Inc.

A sample was submitted with your inquiry and is being returned as requested. As stated in your letter, "Tranquil Moments Holiday Relaxation Kit" consists of a vinyl plastic eye mask filled with glycerine and water, which can be heated or chilled, and placed over the eyes.

The applicable subheading for the "Tranquil Moments Holiday Relaxation Kit" will be 1520.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other glycerol (glycerine), including synthetic glycerol. The rate of duty will be 1.1 cents per kilogram.

Duty on products classifiable under 1520.90.0000, HTS, are temporarily reduced under subheading 9903.10.22, HTS. The rate of duty will be 0.8 per kilogram.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAQUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

June 26, 1991
CLA38:S:N:N1:235 864393
Category: Classification
Tariff No. 3823.90.5050

MS. KAREN L. HERSHMAN
MANAGER OF ADMINISTRATION CINZIA, A DIVISION OF FASHION DYNAMICS. INC.
100 School Street
Bergenfield, New Jersey 07621

Re: The tariff classification of a plastic chemical filled eye mask, from Taiwan.

DEAR MS. HERSHMAN:

In your letter dated June 17, 1991, you requested a tariff classification ruling.

Product to be imported is a plastic eyemask containing chemicals which can be heated or chilled and placed over the eyes. The plastic eyemask has been inserted in a textile packet specifically designed to house it, with an elastic band to keep it in place over the eyes.

The applicable subheading for the product described above will be 3823.90.5050, Harmonized Tariff Schedule of the United States (HTS), which provides for chemical products not elsewhere provided for. The rate of duty will be 5 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

June 19, 1996
CLA-2-30:RR:NC:FC:238 A84501
Category: Classification
Tariff No. 3005.90.5090

MS. KIM YOUNG
BDP INTERNATIONAL INC.
2721 Walker Rd., N.W.
Grand Rapids, MI 49504

Re: The tariff classification of Relaxing Eye Mask from Taiwan.

DEAR MS. YOUNG:

In your letter dated May 31, 1996, on behalf of your client, Meijer, Inc., you requested a tariff classification ruling.

The submitted sample, Relaxing Eye Mask (Item# 586330, Style# 61-BB706A), consists of a face mask which is made of clear plastic. The mask is worn over the eyes and is filled with purple-colored water (due to the presence of a food colorant). It has two oblong eyeholes, and is secured around the head by a permanently attached plastic strap (which is an extension of the mask) that has a buckle. It can be heated in hot water, or chilled in a refrigerator, to relieve stuffed nasal passages, tired or puffy eyes, hangovers, and other head discomforts. The mask is put up in packaging for retail sale. The sample is being returned as requested.

The applicable subheading for the subject product will be 3005.90.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Wadding, gauze, bandages and similar articles..., impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Other: Other: Other." The rate of duty will be free.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-6553.

This ruling is being issued under the provisions of Part 177 of the Customs

Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Cornelius Reilly at 212-466-5770.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

CLA-2 RR:CR:GC 964850ptl
Category: Classification
Tariff No. 3924.90.55

MR. DAVID A. EISEN
TOMPKINS & DAVIDSON, P.C.
One Astor Plaza
1515 Broadway
New York, NY 10036

Re: Plastic, liquid filled eye masks; NY 869248 revoked.

DEAR MR. EISEN:

This is in reference to NY 869248, dated December 18, 1991, issued to you on behalf of Avon Products, Inc. by the Director, National Commodity Specialist Division, New York, in which a product identified as "Tranquil Moments Holiday Relaxation Kit" was classified in subheading 1520.90.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other glycerol (glycerine), including synthetic glycerol. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 3924.90.55, HTSUS, which provides for other household and toilet articles, of plastics, other, other.

Facts:

According to NY 869248, the "Tranquil Moments Holiday Relaxation Kit" consists of a vinyl plastic eye mask filled with glycerine and water. The article can be heated or chilled. The user places the article over his or her eyes to produce the desired relaxation effect.

Issue:

What is the classification of plastic, liquid filled eye mask?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity

Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

1520.00.00 00	Glycerol, crude; glycerol waters and glycerol lyes
3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes:
	* * *
3005.90	Other:
	* * *
3005.90.50	Other
	* * *
3005.90.5090	Other
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
	* * *
3924.90	Other:
	* * *
3924.90.55	Other.

As stated above, the GRIs are to be applied in order. GRI 1 provides that articles are to be classified by the terms of the headings and any relevant Section and Chapter Notes. For an article to be classified is a particular heading, that heading must describe the article.

When we examine the vinyl plastic eye mask under consideration, we find that the article does not fall within the scope of goods described by any of general chapter notes of chapter 15, which state that the chapter covers:

(1) Animal or vegetable fats and oils, whether crude, purified or refined or treated in certain ways (*e.g.*, boiled, sulphurised or hydrogenated).

(2) Certain products derived from fats or oils, particularly their cleavage products (*e.g.*, crude glycerol).

(3) Compounded edible fats and oils (*e.g.*, margarine).

(4) Animal or vegetable waxes.

(5) Residues resulting from the treatment of fatty substances or of animal or vegetable waxes.

Because the vinyl plastic eye mask does not fall within the scope of articles covered by the chapter, the mask cannot be classified in a subheading of chapter 15.

Although the vinyl plastic masks are claimed to provide relaxation because of

their ability to provide a cooling or heating treatment to the user, they do not rise to the level of dressings, adhesive plasters or poultices contemplated by heading 3005, HTSUS. The ENs to heading 30.05 indicate that in order to be included within the coverage of that heading, the articles must be some type of bandage, wadding or gauze for dressings which has been specially treated and which is clearly intended for the medical, surgical, dental or veterinary purpose of being applied to a wound or bodily injury. The vinyl plastic masks are not this type of medical products. Thus, they cannot be classified in subheading 3005, HTSUS.

Because the eye masks are composite goods, consisting of a plastic exterior and a liquid filler, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The eye masks are described in GRI 2(b) which covers mixtures and combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting or more than one material or substance shall be according to the principles of Rule 3." Because the ingredients of the eye masks present us with a composite good for classification purposes, we turn to GRI 3(b) which governs the classification of mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale. Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character. The EN's provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also, Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed CAFC No. 98-1227 (March 16, 1999). Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN Rule 3(b)(VIII) should also be considered, as applicable.

Before we can determine the essential character of the eye masks, we must first determine the classification of the constituent materials or components.

Heading 3924, HTSUS, provides for, among other things, household articles and toilet articles, of plastics. The ENs to subheading 39.24 provide that the heading covers such household articles of plastics as hot water bottles. The liquid contents of the masks are inert mixtures which are either heated or cooled prior to use by the consumer. The flexible plastic shell conforms to the wearer's face to permit maximum contact with the mask. Hot water bottles have traditionally been used by people to provide relief to sore areas. The vinyl plastic eye mask is an updated version of the traditional hot water bottle, taking advantage of modern manufacturing techniques to achieve traditional results. For the above reasons, by application of GRI 1, the vinyl plastic portion of the eye mask is classified in heading 3924, HTSUS, which provides for other household articles and toilet articles, of plastics.

The liquid mixture (glycerine and water) which is inside the mask is itself a composite good. Heading 2201, HTSUS, provides for potable waters consumed as a beverage. The water inside the mask, mixed with glycerine, is not potable in its imported condition. Water with glycerine does not fall within any of the exemplars given for types of products included in heading 2201. Further, heading 2201 does not provide for "articles of water." Thus, the contents of the mask cannot be

classified in heading 2201, HTSUS. Similarly, for the reasons stated above, the liquid contents of the mask are not classifiable in heading 1502, HTSUS, as glycerol. The liquid contents of the mask is a mixture of water and glycerol which is classified in heading 3824, HTSUS, as residual products of the chemical or allied industries, not elsewhere specified or included. By its terms, this heading is broad enough to cover mixtures that are put up in a way that renders them fit for a particular application.

The composite goods being classified are being imported to be used as eye masks. One of the key elements of an eye mask is its ability to conform to the contours of the wearer's face. In this case, the "indispensable function" (*Better Home Plastics, supra*) of the article is that it can be comfortably worn on one's face. The plastic shell which contains the water/dye mixture provides the article with the flexibility necessary to enable the wearer to wrap the article around his or her face while simultaneously enjoying the benefits of the hot or cool contents. Without the plastic, the article could not function as designed. This criterion indicates that the essential character of the good is provided by the plastic component. We therefore conclude that the essential character of the product is provided by the plastic component so that, under GRI 3(b), the eye masks are classifiable in heading 3924, HTSUS.

For the above reasons, plastic, water/glycerol filled, eye masks are classified in subheading 3924.90.55, HTSUS, which provides for other household articles and toilet articles, of plastics, other, other.

Holding:

The "Tranquil Moments Holiday Relaxation Kit" vinyl plastic eye mask is classified in subheading 3924.90.55, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of plastics, other, other.

NY 869248, dated December 18, 1991, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

CLA-2 RR:CR:GC 964851ptl
Category: Classification
Tariff No. 3924.90.55

MS KAREN L. HERSHMAN
MANAGER OF ADMINISTRATION CINZIA
FASHION DYNAMICS, INC.
100 School Street
Bergenfield, NJ 07621

Re: Plastic, chemical filled eye masks; NY 864393 revoked.

DEAR MS. HERSHMAN:

This is in reference to NY 864393, dated June 26, 1991, issued to you by the Director, National Commodity Specialist Division, New York, in which a plastic, chemical filled eye mask was classified in subheading 3824.90.5050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for chemical products not elsewhere provided for. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth

below, the correct classification for the article is subheading 3924.90.55, HTSUS, which provides for other household and toilet articles, of plastics, other, other.

Facts:

According to NY 864393, the plastic eye mask is filled with chemicals and can be heated or chilled. The user places the plastic in a textile packet which has an elastic band to keep the article over his or her eyes.

Issue:

What is the classification of plastic, chemical filled, eye mask?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:

3824.90 Other:

Other:

Other

Other

Other

3824.90.9050 Other

3924 Tableware, kitchenware, other household articles and toilet articles, of plastics:

* * *

3924.90 Other:

* * *

3924.90.55 Other.

As stated above, the GRIs are to be applied in order. GRI 1 provides that articles are to be classified by the terms of the headings and any relevant Section and Chapter Notes. For an article to be classified is a particular heading, that heading must describe the article.

Because the eye masks are goods consisting partly of plastic and partly of a chemical mixture, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The eye masks are described in GRI 2(b) which covers mixtures and combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting or more than one material or substance shall be according to the principles of Rule 3." Because the ingredients of the eye masks present us with a composite good for classification purposes, we turn to GRI 3(b) which governs the classification of mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale. Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character. The EN's provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also, Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed CAFC No. 98-1227 (March 16, 1999). Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN Rule 3(b)(VIII) should also be considered, as applicable.

Before we can determine the essential character of the eye masks, we must first determine the classification of the constituent materials or components.

Heading 3924, HTSUS, provides for, among other things, household articles and toilet articles, of plastics. The ENs to subheading 39.24 provide that the heading covers such household articles of plastics as hot water bottles. The liquid contents of the masks are chemically inert mixtures which are either heated or cooled prior to use. The flexible plastic shell conforms to the wearer's face to permit maximum contact with the mask. Hot water bottles have traditionally been used by people to provide relief to sore areas. The vinyl plastic eye mask is an updated version of the traditional hot water bottle, taking advantage of modern manufacturing techniques to achieve traditional results. For the above reasons, by application of GRI 1, the vinyl plastic portion of the eye mask is classified in heading 3924, HTSUS, which provides for other household articles and toilet articles, of plastics.

The chemical mixture which is inside the mask is itself a composite good. The chemical mixture is classified in heading 3824, HTSUS, as residual products of the chemical or allied industries, not elsewhere specified or included.

The composite goods being classified are being imported to be used as eye masks. One of the key elements of an eye mask is its ability to conform to the contours of the wearer's face. In this case, the "indispensable function" (*Better Home Plastics, supra*) of the article is that it can be comfortably worn on ones face. The plastic shell which contains the chemicals provides the article with the flexibility necessary to enable the wearer to wrap the article around his or her face while simultaneously enjoying the benefits of the hot or cool contents. Without the

plastic, the article could not function as designed. This criterion indicates that the essential character of the good is provided by the plastic component. We therefore conclude that the essential character of the product is provided by the plastic component so that, under GRI 3(b), the eye masks are classifiable in heading 3924, HTSUS.

For the above reasons, plastic chemical filled eye masks are classified in subheading 3924.90.55, HTSUS, which provides for other household articles and toilet articles, of plastics, other, other.

Holding:

The plastic chemical filled eye masks are classified in subheading 3924.90.55, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of plastics, other, other.

NY 864393, dated June 26, 1991, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

CLA-2 RR:CR:GC 964852ptl
Category: Classification
Tariff No. 3924.90.55

MS KIM YOUNG
BDP INTERNATIONAL, INC.
2721 Walker Road, N.W.
Grand Rapids, MI 49504

Re: Relaxing eye mask; NY A84501 revoked.

DEAR MS. YOUNG:

This is in reference to NY A84501, dated June 19, 1996, issued to you on behalf of your client, Meijer, Inc., by the Director, National Commodity Specialist Division, New York, in which a plastic eye mask (Item #586330, Style # 61-BB706A), was classified in subheading 3005.90.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Wadding, gauze, bandages and similar articles …, impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: other: other: other. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 3924.90.55, HTSUS, which provides for other household and toilet articles, of plastics, other, other.

Facts:

According to NY A84501, the clear plastic eye mask is filled with purple-colored water (due to the presence of a food colorant). The mask can be heated by putting it in hot water, or chilled by placing it in a refrigerator. The mask has two oblong eye holes. The user places the mask over his or her eyes and secures it by using a permanently attached plastic strap (which is an extension of the mask) that has a buckle. The mask is claimed to relieve stuffed nasal passages, tired or puffy eyes, hangovers, and other head discomforts.

Issue:

What is the classification of a liquid filled plastic eye mask?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow:
3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes:
	* * *
3005.90	Other:
	* * *
3005.90.50	Other
	* * *
3005.90.5090	Other
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
	* * *
3924.90	Other:
	* * *
3924.90.55	Other.

As stated above, the GRIs are to be applied in order. GRI 1 provides that articles are to be classified by the terms of the headings and any relevant Section and Chapter Notes. For an article to be classified is a particular heading, that heading must describe the article.

NY A84501 classified the vinyl plastic eye masks in heading 3005, HTSUS, which provides for wadding, gauze, bandages and similar articles. Although the vinyl plastic eye masks are claimed to provide relief and other benefits because of their ability to provide a cooling or heating treatment to the user, they do not rise to the level of dressings, adhesive plasters or poultices contemplated by heading 3005, HTSUS. The ENs to heading 30.05 indicate that in order to be included within the coverage of that heading, the articles must be some type of bandage, wadding or gauze for dressings which has been specially treated and which is clearly intended for the medical, surgical, dental or veterinary purpose of being applied to a wound or bodily injury. The vinyl plastic eye masks are not this type of medical product. Thus, they cannot be classified in subheading 3005, HTSUS.

Because the eye masks are composite goods, consisting of a plastic exterior and a liquid filler, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The eye masks are described in GRI 2(b) which covers mixtures and combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting or more than one material or substance shall be according to the principles of Rule 3." Because the ingredients of the eye masks present us with a composite good for classification purposes, we turn to GRI 3(b) which governs the classification of mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale. Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character. The EN's provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also, Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), affirmed CAFC No. 98-1227 (March 16, 1999). Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN Rule 3(b)(VIII) should also be considered, as applicable.

Before we can determine the essential character of the eye masks, we must first determine the classification of the constituent materials or components.

Heading 3924, HTSUS, provides for, among other things, household articles and toilet articles, of plastics. The ENs to subheading 39.24 provide that the heading covers such household articles of plastics as hot water bottles. The liquid contents of the masks are chemically inert mixtures which are either heated or cooled prior to use. The flexible plastic shell conforms to the wearer's face to permit maximum contact with the mask. Hot water bottles have traditionally been used by people to provide relief to sore areas. The vinyl plastic eye mask is an updated version of the traditional hot water bottle, taking advantage of modern manufacturing techniques to achieve traditional results. For the above reasons, by application of GRI 1, the vinyl plastic portion of the eye mask is classified in heading 3924, HTSUS, which provides for other household articles and toilet articles, of plastics.

The liquid mixture (water and dye) which is inside the mask is itself a composite good. Heading 2201, HTSUS, provides for potable waters consumed as a beverage. The water inside the mask, although mixed with food grade dye, is not potable in

its imported condition. Water with added coloring does not fall within any of the exemplars given for types of products included in heading 2201. Further, heading 2201 does not provide for "articles of water." Thus, the contents of the mask cannot be classified in heading 2201, HTSUS. The liquid contents of the mask is a mixture of water and a dye which is classified in heading 3824, HTSUS, as residual products of the chemical or allied industries, not elsewhere specified or included. By its terms, this heading is broad enough to cover mixtures that are put up in a way that renders them fit for a particular application.

The composite goods being classified are being imported to be used as eye masks. One of the key elements of an eye mask is its ability to conform to the contours of the wearer's face. In this case, the "indispensable function" (*Better Home Plastics, supra*) of the article is that it can be comfortably worn on one's face. The plastic shell which contains the water/dye mixture provides the article with the flexibility necessary to enable the wearer to wrap the article around his or her face while simultaneously enjoying the benefits of the hot or cool contents. Without the plastic, the article could not function as designed. This criterion indicates that the essential character of the good is provided by the plastic component. We therefore conclude that the essential character of the product is provided by the plastic component so that, under GRI 3(b), the eye masks are classifiable in heading 3924, HTSUS.

For the above reasons, plastic, water/dye filled, eye masks are classified in subheading 3924.90.55, HTSUS, which provides for other household articles and toilet articles, of plastics, other, other.

Holding:

The plastic, water/dye filled, eye masks are classified in subheading 3924.90.55, HTSUS, which provides for: Tableware, kitchenware, other household articles and toilet articles, of plastics, other, other.

NY A84501, dated June 19, 1996, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF LATEX GLOVES FOR NON-MEDICAL USE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the tariff classification of latex gloves for non-medical use.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke five ruling letters per-

taining to the tariff classification of latex gloves for non-medical use under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 13, 2001.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke five rulings pertaining to the tariff classification of bulk importations of latex gloves for non-medical use. Although in this notice Customs is specifically referring to Customs Headquarters rulings (HQs) 951033, dated June 8, 1992, 951586, dated June 23, 1992, 957522 and 957561, both dated May 24, 1995, and 961270, dated April 15, 1998, this notice covers any rulings on this merchan-

dise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importation of merchandise subsequent to this notice.

In HQs 951033, 951586, 957522, 957561, and 961270, Customs ruled that latex gloves for non-medical use were classified in subheading 4015.11.00, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical. HQs 951033, 951586, 957522, 957561, and 961270 are set forth as Attachments A through E, respectively.

Our decisions in these rulings were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. For instance, in HQ 961270, referring to industrial use disposable latex gloves, we noted that both industrial use and medical use gloves were made on the same machines using the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

The Explanatory Note ("EN") for subheading 4015.11 describes "surgical gloves" as "thin, highly tear-resistant articles." In fact, in the United States, such gloves undergo stringent testing for leak resistance and adulteration. (21 CFR 800.20). According to the Food and Drug Administration ("FDA"), industrial use gloves are medical use gloves that have failed this test or were never tested. Manufacturers may then sell the untested, torn or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use

market because they are of differing quality. (21 CFR 800.55). We now believe that the quality difference in these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use ones.

Furthermore, the principal use of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA. (21 CFR 801 *et seq*.). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a "use" provision to merchandise, the controlling regulatory scheme is indeed relevant.

Lastly, application of the factors enumerated in *United States v. Carborundum Co*., 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976) all mandate classification of gloves imported for and labeled for non-medical use in subheading 4015.19.10, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless". The general physical characteristics of industrial use gloves include leaks, tears or pinholes not found in surgical and medical use gloves. The recognition in the trade of industrial use, the expectation of the ultimate purchasers for industrial use, the channels of trade to industrial, cosmetic and food handler industries, the environment of the sale including the label stating that the gloves are only for non-medical use, and the actual usage of the merchandise in cosmetic, electronic, food handling and other industries, all point to principal use in a non-medical setting. Also, there is an extra expense in testing surgical and medical use gloves so that it would not be practical to use surgical and medical use gloves as industrial gloves and it is prohibited for industrial use gloves to be used for surgical or medical purposes due to the leaky or torn nature of the articles.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQs 951033, 951586, 957522, 957561, and 961270, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQs 964836, 964837, 964838, and 964839 (Attachments F through I to this document, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

June 8, 1992
CLA-2 CO:R:C:F 951033 ALS
Category: Classification
Tariff No. 4015.11.0000

DISTRICT DIRECTOR OF CUSTOMS
55 Erieview Plaza
Cleveland, Ohio 44114

Re: Request for Further Review of Protest 4103-91-000187, dated June 13, 1991, Concerning Disposable Latex Rubber Gloves.

DEAR MR. NELSON:

This ruling is on a protest that was filed against your decision of May 17, 1991, in the liquidation of several entries covering the referenced items. Other protests covering the same or similar gloves were also filed. Consideration of this matter was delayed since one or more of the protest files were misdirected during processing.

Facts:

The articles under consideration are two styles of disposable latex gloves. One style is ambidextrous, powdered for easy on-off, comes in 9-1/2 inch length and .005 inch thickness and comes in two sizes. It is packaged in boxes of 100 and in polybags of 1000. The sample box provided has a stick-on label bearing the legend "FOR INDUSTRIAL USE". Advertising literature provided by the protestant specifies a number of uses for the gloves and states that they are for use "[a]nywhere you need a light duty liquidproof glove." Information on the box specifies that the gloves are made from natural latex for greater finger dexterity extra sensitivity and tactility, they do not cause hand fatigue, they have snug rolled cuffs for greater protection and they keep hands cool and comfortable. A second style of the latex gloves is made for both left hand and right hand application. They come in a 12 inch length, are .009 inches thick, have an anti-slip bisque finish and come in half-sizes ranging from 6 to 9. Some of the gloves and are packaged in an individual heat-sealed polybag and some are packaged 50 right-hand or left-hand gloves per heat-sealed polybag. Both of the aforementioned packages are subsequently packaged in master heat sealed polybags which, in turn, are packaged so that there are 200 pairs per case. These gloves are noted to provide a combination of comfort, sensitivity and fit, offer a secure grip for both wet and dry applications and to provide one of the industry's lowest particulate levels for use in a clean room environment.

Issue:

What is the classification of 100 percent natural latex disposable rubber gloves?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the heading and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the heading and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The articles under consideration were classified by Customs as surgical and medical gloves under subheading 4015.11.0000, HTSUSA. The protestant states that the gloves are industrial gloves classifiable under subheading 4015.19.1010, HTSUSA. The protestant notes that these gloves are labelled for industrial use and that they are sold to distributors who sell to industrial companies for various applications. Advertising literature provided by the protestant states that the am-

bidextrous gloves are good "[a]nywhere you need a light-duty liquidproof glove" and specifies use in laboratory analysis/technical work, food processing and handling, quality control, electronic assembly, polishing, equipment clean-up, nuclear power plant clean-up, pharmaceutical plants, cosmetic manufacturing, semi-conductor plans, acid etching, camera lens and film processing, watch manufacturing, medical kit manufacturing, biotechnology, airline cabin maintenance, USDA veterinary departments, fast-food preparation and quality control inspection. Similar advertising literature regarding the gloves which are specifically designed for left or right hand application states that such gloves are for use in electronics, pharmaceuticals, aerospace and biotech controlled environments and in environments where there is a need for reduced particle contamination.

The protestant also states that the gloves are marked "FOR INDUSTRIAL USE" in order to comply with the Food and Drug Administration (FDA) requirements for disposable rubber latex gloves used with industrial applications.

In considering this matter we consulted the Explanatory Notes to the Harmonized System which represents the opinion of the international classification experts. We noted that the subheading explanatory note to subheading 4015.11 describes surgical gloves as "...thin, highly tear-resistant article manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

We also consulted the regulations of the FDA. In this regard, we were unable to confirm that there is a regulation of that agency which requires the labelling of gloves for industrial use. A FDA source informally advised us that that agency would not be interested in latex gloves being brought in for non-medical purposes. He was unable to confirm that such a regulation existed. We also consulted Part 800 of the FDA Regulations (21 CFR Part 800) regarding patient examination and surgeon's gloves; adulteration. These regulations, written in light of the prevalence of human immunodeficiency virus (HIV) infection and the risk of clinical transmission of other infections, define adulteration of the referenced gloves and establish the sample plans and test method to be used to determine if the gloves are adulterated. Those regulations, without further definition, include gloves which meet the adulteration and test method specifics therein which are identified as medical or surgical gloves.

Section 880.6250, FDA Regulations (21 CFR 880.6250) defines a patient examination glove as "...a disposable device intended for medical purposes that is worn on the examiner's hand or finger to prevent contamination between and examiner." Section 878.4460, FDA Regulations (21 CFR 878.4460) defines a surgeon's glove as "...a device made of natural or synthetic rubber intended to be worn by operating room personnel to protect a surgical wound from contamination." While there is no FDA regulatory requirement that these gloves be sterile, FDA guidelines do provide that gloves utilized during operating procedures meet certain sterility requirements. The aforementioned FDA source advised us that appropriate sterility requirements may be met at or subsequent to importation if the gloves are identified as medical or surgical gloves. The sterility requirements must be met before the gloves are made available to the end-user.

In discussions with both an FDA source and a practicing physician we confirmed that only a small category of these gloves, *i.e.* surgeon's gloves utilized when there is an open wound, such as during an operation, must be sterile. Examination gloves, even those utilized for rectal and vaginal examinations, are not normally sterile. These gloves are packaged in dispenser boxes in the same manner as the protestants ambidextrous gloves. We were unable to distinguish any difference between such gloves which are the subject of this protest and those which were observed in the physician's office.

The physician advised us that a sterile environment is only a concern when there is an open wound where blood may be present. He noted that non-sterile examination gloves which protect the physician from a disease and assure that a disease will not be transmitted from one patient to another via the physician are satisfactory for this purpose.

While the FDA Regulations are not binding on the Customs Service and are referenced for information purposes only, we noted that those regulations, while

defining qualities to be possessed by the surgeon's and examination gloves, did not provide any characteristics which would be unique to those gloves. We also noted that the documentation provided by the protestant did not provide any basis for distinguishing between its product and medical gloves. Other than statements that the gloves would be used for industrial purposes and a label, stick-on in the case of the ambidextrous gloves, which stated they were for industrial use, there does not appear to be any basis for distinguishing these gloves from those described as medical gloves.

Holding:

The subject disposable latex gloves are classifiable under subheading 4015.11.0000, HTSUSA, and are subject to a general rate of duty of 3.7 percent *ad valorem*. Such articles, if the product of Thailand, which meet the requirements of General Note 3(c)(ii) of the HTSUSA, regarding the General System of Preferences (GSP), are eligible for a free special rate of duty upon compliance with the provisions of section 10.171 *et seq.*, Customs Regulations (19 C.F.R. §10.171 *et seq.*). Such articles, if the product of Malaysia, are presently excluded from such treatment by subdivision (c)(ii)(D) of General Note 3, HTSUSA.

Since the rate of duty under the classification indicated above is the same as the liquidated rate, you are instructed to deny the protest in full. A copy of this decision should be attached to Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

June 23, 1992
CLA-2 CO:R:C:F 951586 ALS
Category: Classification
Tariff No. 4015.11.0000

DISTRICT DIRECTOR OF CUSTOMS
55 Erieview Plaza
Cleveland, Ohio 44114

Re: Request for Further Review of Protest 4103-91-000187, dated June 13, 1991, Concerning Disposable Latex Rubber Gloves.

DEAR MR. NELSON:

This ruling is on a protest that was filed against your decision of May 17, 1991, in the liquidation of several entries covering the referenced items. Other protests covering the same or similar gloves were also filed. Consideration of this matter was delayed since one or more of the protest files were misdirected during processing.

Facts:

The articles under consideration are two styles of disposable latex gloves. One style is ambidextrous, powdered for easy on-off, comes in 9-1/2 inch length and .005 inch thickness and comes in two sizes. It is packaged in boxes of 100 and in polybags of 1000. The sample box provided has a stick-on label bearing the legend

"FOR INDUSTRIAL USE." Advertising literature provided by the protestant specifies a number of uses for the gloves and states that they are for use "[a]nywhere you need a light duty liquidproof glove." Information on the box specifies that the gloves are made from natural latex for greater finger dexterity extra sensitivity and tactility, that they do not cause hand fatigue, that they have snug rolled cuffs for greater protection and that they keep hands cool and comfortable.

A second style of the latex gloves is made for both left hand and right hand application. They come in a 12 inch length, are .009 inches thick, have an anti-slip bisque finish and come in half-sizes ranging from 6 to 9. Some of the gloves are packaged in an individual heat-sealed polybag and some are packaged 50 right-hand or left-hand gloves per heat-sealed polybag. Both of the aforementioned packages are subsequently packaged in master heat sealed polybags which, in turn, are packaged so that there are 200 pairs per case. These gloves are noted to provide a combination of comfort, sensitivity and fit, offer a secure grip for both wet and dry applications and to provide one of the industry's lowest particulate levels for use in a clean room environment.

Issue:

What is the classification of 100 percent natural latex disposable rubber gloves?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the heading and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the heading and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The articles under consideration were classified by Customs as surgical and medical gloves under subheading 4015.11.0000, HTSUSA. The protestant states that the gloves are industrial gloves classifiable under subheading 4015.19.1010, HTSUSA. The protestant notes that these gloves are labelled for industrial use and that they are sold to distributors who sell to industrial companies for various applications. Advertising literature provided by the protestant states that the ambidextrous gloves are good "[a]nywhere you need a light-duty liquidproof glove" and specifies use in laboratory analysis/technical work, food processing and handling, quality control, electronic assembly, polishing, equipment clean-up, nuclear power plant clean-up, pharmaceutical plants, cosmetic manufacturing, semi-conductor plans, acid etching, camera lens and film processing, watch manufacturing, medical kit manufacturing, biotechnology, airline cabin maintenance, USDA veterinary departments, fast-food preparation and quality control inspection. Similar advertising literature regarding the gloves which are specifically designed for left or right hand application states that such gloves are for use in electronics, pharmaceuticals, aerospace and biotech controlled environments and in environments where there is a need for reduced particle contamination.

The protestant also states that the gloves are marked "FOR INDUSTRIAL USE" in order to comply with the Food and Drug Administration (FDA) requirements for disposable rubber latex gloves used with industrial applications.

In considering this matter we consulted the Explanatory Notes to the Harmonized System which represents the opinion of the international classification experts. We noted that the subheading explanatory note to subheading 4015.11 describes surgical gloves as "...thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

We also consulted the regulations of the FDA. In this regard, we were unable to confirm that there is a regulation of that agency which requires the labelling of gloves for industrial use. A FDA source informally advised us that that agency would not be interested in latex gloves being brought in for non-medical purposes. He was unable to confirm that such a regulation existed. We also consulted Part

800 of the FDA Regulations (21 CFR Part 800) regarding patient examination and surgeon's gloves; adulteration. These regulations, written in light of the prevalence of human immunodeficiency virus (HIV) infection and the risk of clinical transmission of other infections, define adulteration of the referenced gloves and establish the sample plans and test method to be used to determine if the gloves are adulterated. Those regulations, without further definition, include gloves which meet the adulteration and test method specifics therein which are identified as medical or surgical gloves.

Section 880.6250, FDA Regulations (21 CFR 880.6250) defines a patient examination glove as "...a disposable device intended for medical purposes that is worn on the examiner's hand or finger to prevent contamination between patient and examiner." Section 878.4460, FDA Regulations (21 CFR 878.4460) defines a surgeon's glove as "...a device made of natural or synthetic rubber intended to be worn by operating room personnel to protect a surgical wound from contamination." While there is no FDA regulatory requirement that these gloves be sterile, FDA guidelines do provide that gloves utilized during operating procedures meet certain sterility requirements. The aforementioned FDA source advised us that appropriate sterility requirements may be met at or subsequent to importation if the gloves are identified as medical or surgical gloves. The sterility requirements must be met before the gloves are made available to the end-user.

In discussions with both an FDA source and a practicing physician we confirmed that only a small category of these gloves, *i.e.*, surgeon's gloves utilized when there is an open wound, such as during an operation, must be sterile. Examination gloves, even those utilized for rectal and vaginal examinations, are not normally sterile. These gloves are packaged in dispenser boxes in the same manner as the protestant's ambidextrous gloves.

We were unable to find any difference between such gloves which are the subject of this protest and those which were observed in the physician's office.

The physician advised us that a sterile environment is only a concern when there is an open wound where blood may be present. He noted that non-sterile examination gloves which protect the physician from a disease and assure that a disease will not be transmitted from one patient to another via the physician are satisfactory for this purpose.

While the FDA Regulations are not binding on the Customs Service and are referenced for information purposes only, we noted that those regulations, while defining qualities to be possessed by the surgeon's and examination gloves, did not provide any characteristics which would be unique to those gloves. We also noted that the documentation provided by the protestant did not provide any basis for distinguishing between its product and medical gloves. Other than statements that the gloves would be used for industrial purposes and a label, stick-on in the case of the ambidextrous gloves, which stated they were for industrial use, there does not appear to be any basis for distinguishing these gloves from those described as medical gloves.

Holding:

The subject disposable latex gloves are classifiable under subheading 4015.11.0000, HTSUSA, and are subject to a general rate of duty of 3.7 percent *ad valorem*. Such articles, if the product of Thailand, which meet the requirements of General Note 3(c)(ii) of the HTSUSA, regarding the General System of Preferences (GSP), are eligible for a free special rate of duty upon compliance with the provisions of section 10.171 *et seq*., Customs Regulations (19 C.F.R. §10.171 *et seq*.). Such articles, if the product of Malaysia, are presently excluded from such treatment by subdivision (c)(ii)(D) of General Note 3, HTSUSA.

Since the rate of duty under the classification indicated above is the same as the liquidated rate, you are instructed to deny the protest in full. A copy of this decision should be attached to Customs Form 19 and provided to the protestant as

part of the notice of action on the protest.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

May 24, 1995
CLA-2 R:C:F 957522 ALS
Category: Classification
Tariff No. 4015.11.0000

DISTRICT DIRECTOR OF CUSTOMS
1000 Second Ave, Room 2200
Seattle, WA 98104

Re: Request for Further Review of Protest 3001-94-100631, dated October 24, 1994, Concerning Disposable Latex Rubber Examination Gloves From Malaysia.

DEAR MR. HARDY:

This ruling is on a protest that was filed against your decision of October 21, 1994, in the liquidation of an entry covering the referenced articles.

Facts:

The articles under consideration are ambidextrous disposable unsterilized latex examination gloves produced in Malaysia which are imported in bulk and subsequently packaged in quantities of 100 pieces.

Issue:

What is the classification of ambidextrous natural latex disposable rubber examination gloves?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The articles under consideration were classified by Customs as surgical and medical gloves under subheading 4015.11.0000, HTSUSA. The protestant states that the gloves are non medical gloves classifiable in subheading 4015.19.1010, HTSUSA. The protestant states that the subject gloves, which are imported in bulk, are not medical gloves and that, when repackaged after importation, they are labelled as non-medical gloves. A photocopy of a portion of that package is provided to confirm that.

The protestant notes that the gloves are not approved by the Food and Drug Administration (FDA) for medical purposes. It also notes that, while the gloves are manufactured in a facility approved by the FDA under its Good Manufacturing Practices, they do not meet the FDA requirements for medical gloves. In this regard the protestant notes that the non-medical character of the gloves can be tested by viewing the pricing, labelling and packaging, advertising and customer

lists. It also notes that the commercial designation of the merchandise and the FDA standards should be used in interpreting the tariff. It further states that there may be different production lines or facilities in an FDA approved facility and that gloves in such a facility may be produced by a Taiwanese machine which may produce products which do not pass pinhole ratio requirements.

In considering this matter we note that latex examination gloves, as indicated in Headquarters Ruling Letters (HRL) 951204 and 951586, dated June 23, 1992, and HRL 951489, dated July 1, 1992, need only meet FDA standards if they are to be marketed as medical gloves. In such case the gloves would have to be manufactured pursuant to FDA requirements-and regulations, as noted by the protestant. While the protestant indicates that there are secondary facts such as price; packaging, labelling, etc., which should be used to corroborate whether the gloves are medical or non-medical, we do not believe that these factors are conclusive. The protestant clearly notes that the price for medical gloves is almost double the price paid for non-medical latex gloves. It also notes that gloves for medical purposes must comply with costly FDA approval procedures. Since the protestant has not provided any objective documentation or information which would permit us to distinguish between the medical and non-medical gloves and since the procedures for obtaining FDA approval are obviously costly, we must assume that the increased costs of the gloves labelled medical gloves is related to meeting FDA requirements relating to facility approval, testing, etc., so that certain gloves can be marketed as medical gloves. In other words no objective documentation or information has been submitted which would provide a basis for distinguishing between those gloves which are to be marketed for medical purposes and which, therefore, must comply with FDA requirements, and those gloves which are to be marketed for other purposes and which, therefore, need not comply with FDA requirements and are not submitted for such approval. In view of this, the fact that Customs laboratory analysis confirms that the instant gloves meet the FDA standards, along with the fact that the gloves are manufactured in an FDA approved facility by a registered supplier of medical gloves, etc., makes it difficult to reach a conclusion other than these are medical gloves.

We have seen dispenser boxes of latex examination gloves in both medical and commercial environments and have been unable to observe a difference between the two except as to labelling. They would both seem to be capable of accomplishing the purposes for which they were manufactured, preventing the transmittal of disease or contamination between the examiner and the object of the examination. Based on the documentation of record in this protest and after reviewing the documentation submitted in connection with earlier rulings, we have been unable to conclude that the instant gloves are somehow distinguishable from medical gloves except for the method in which they are labelled and marketed.

While the use of a product in the United States might be considered in determining the classification of a product, we do not agree with the protestant that the common or commercial definition of the product in the United States, based on whether or not the importer, manufacturer, or other interested party has sought FDA approval of certain latex gloves as medical gloves; is controlling for tariff purposes. If we were to follow this argument we would have to conclude that two gloves which were exactly the same in all particulars, except that one was labelled "medical" and the other was labelled "non-medical" would not be uniformly classified.

Further, in classifying merchandise we read through the headings and subheadings until we reach the one that first describes the goods. Since the instant gloves apparently meet the requirements for surgical and medical gloves, albeit not labelled as such, we have concluded that the prior classification is correct.

Holding:

Ambidextrous disposable latex examination gloves, the product of Malaysia, are classifiable under subheading 4015.11.0000, HTSUSA, and were subject to a column one general rate of duty of 3.7 percent *ad valorem*.

Since the classification indicated above is the same as the classification under which the entry was liquidated, you are instructed to deny the protest in full.

A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3553-065, dated August 4, 1993, Subject, Revised Protest Directive, this decision should be provided by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entries in accordance with this decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channel

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

May 24, 1995
CLA-2 R:C:F 957561 ALS
Category: Classification
Tariff No. 4015.11.0000

DISTRICT DIRECTOR OF CUSTOMS
610 S. Canal Street
Chicago, IL 60607

Re: Request for Further Review of Protest 3901-94-102358, dated October 20, 1994, Concerning Disposable Natural Latex Rubber Gloves From Malaysia.

DEAR MR. ROSTER:

This ruling is on a protest that was filed against your decision of July 22, 1994, in the liquidation of an entry covering ambidextrous disposable natural latex rubber examination gloves from Malaysia.

Facts:

The articles under consideration are disposable unsterilized latex rubber examination gloves produced in Malaysia.

Issue:

What is the classification of disposable ambidextrous natural latex rubber examination gloves?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The articles under consideration were classified by Customs as surgical and medical gloves under subheading 4015.11.0000, HTSUSA. The protestant states that the gloves are not medical gloves and that they should be classified under

subheading 4015.19.1010, HTSUSA, as other gloves.

Counsel notes that the gloves are packaged in dispenser boxes of 100 gloves which are marked "For Industrial Use Only" and are sold to various non-medical industries, *i.e.*, electronic, pharmaceutical, food processing and chemical. Reference is made to regulatory provision of the Food and Drug Administration (FDA) and the Explanatory Notes (EN) to the Harmonized System regarding surgeon's gloves and the requirement that they be sterile. In this regard, we note that surgeon's gloves are used during an operation to protect a surgical wound from contamination, while the subject gloves are not surgeon's gloves but are examination gloves. Such gloves, even those utilized for rectal and vaginal examinations, are not normally sterile. These gloves are packaged in dispenser boxes in the same manner as the protestant's gloves.

Counsel notes that it is not economically practical to use the instant gloves for medical purposes. It is noted that increased factory inspection and FDA documentation cause medical and surgical gloves to cost more than industrial use gloves. We recognize this difference in cost but do not believe it is the result of any inherent difference between latex gloves labelled as medical and those labelled as industrial. As noted by counsel this cost difference is related to the costs resulting from meeting FDA procedures and requirements to permit latex gloves to be imported as medical gloves if the importer wishes to do so. We, however, note that if the importer does not wish to import the gloves as medical gloves but as industrial gloves, it need not follow the FDA procedures and requirements. This does not mean that there is substantive distinction between the gloves based on such labelling. We were unable to find any difference between gloves such as those which are the subject of this protest and examination gloves commonly seen in a physician's office. Absent documentation which confirms that there is a difference between examination gloves used for medical purposes and examination gloves that are used for other purposes, we must presume that they are the same.

Counsel notes that Customs has not discussed the elements of principal use and that such factor along with manner of labelling must be considered in classifying the gloves. Counsel indicates that certain commercial factors, as enunciated by the court in *United States v. The Carborundum Company*, 63 C.C.P.A. 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied 429 U.S. 979 (1976) should be considered in defining a class or kind of merchandise. The factors specified therein are: the expectation of the ultimate purchaser; channels of trade; general physical characteristics, environment of sale (accompanying accessories, manner of advertisement and display); economic practicality of so using the import; and recognition in the trade of this use. Counsel concludes that based on these factors, it is evident that the instant gloves are not of the class or kind used for surgical or medical purposes. We disagree with counsel's conclusion. We have been unable, as previously noted, to confirm a difference between the physical characteristics of the "medical" versus the "non-medical" gloves.

We note that these gloves, regardless of their labelling or end use, are generally produced in the same FDA approved facilities, on the same machines, etc. In the past when we have submitted these gloves to laboratory analysis, they have all met the FDA requirements; although only certain of the gloves actually were FDA approved. Thus, we have no basis for concluding that there is a distinction between latex rubber gloves based on how they are labelled. This distinction appears to be based on the importer marketing plan rather than any physical characteristics of the gloves. Thus, if we were to rely on the commercial designation and use, as suggested by counsel, we would have to conclude that two gloves which were exactly the same in all particulars, except that one was labelled "medical" and the other was labelled "non-medical" would not be uniformly classified.

Further, in classifying merchandise we read through the headings and subheadings until we reach the one that first describes the goods. Since the instant gloves meet the requirements for surgical and medical gloves, albeit not labelled as such, we have concluded that the prior classification, which follows the holding in Headquarters Ruling Letters (HRL) 951204 and 951586, dated June 23, 1992, and HRL 951489, dated July 1, 1992, is correct.

Holding:

Ambidextrous disposable natural latex rubber gloves, the product of Malaysia, are classifiable under subheading 4015.11.0000, HTSUSA, and were subject to a column 1 general rate of duty of 3.7 percent *ad valorem* in 1994.

Since the classification indicated above is the same as the classification under which the entry was liquidated, you are instructed to deny the protest in full.

A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3553-065, dated August 4, 1993, Subject, Revised Protest Directive, this decision should be provided by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entries in accordance with this decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

April 15, 1998
CLA-2 RR:CR:GC 961270 ALS
Category: Classification
Tariff No. 4015:11:0000

PORT DIRECTOR OF CUSTOMS
U. S. CUSTOMS SERVICE
LOS ANGELES/LONG BEACH AREA
300 S. Ferry Street
Terminal Island, CA 90731

Re: Application for Further Review of Protest 2704-97-102641, dated August 6, 1997, Regarding Disposable Latex Gloves.

DEAR PORT DIRECTOR:

This is in reference to a protest filed against 4 of your decisions of May 1997, concerning the classification of ambidextrous latex rubber gloves from Malaysia.

Your comments submitted with the protest noted several prior Headquarters rulings indicating that the merchandise should be classified in subheading 4015.11.0000, HTSUSA, but that you had received further guidance that the merchandise should be classified, as the entries were liquidated, in subheading 4015.19.1000, HTSUSA, "in the absence of any proof that the gloves in each shipment passed or would pass the FDA requirements."

We have reviewed the protest record and the rulings previously issued as to this merchandise. We find no basis at this time for disturbing those rulings. Accordingly, the holding in the previous rulings should be followed and the protest granted.

A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3553-065, dated August 4, 1993, Subject, Revised Protest Directive, this decision should be pro-

vided by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entries in accordance with this decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT F]

CLA-2 RR:CR:GC 964836 AM
Category: CLASSIFICATION
Tariff No. 4015.19.10

MR. SCOTT D. JOHNSON
C.H. ROBINSON INTERNATIONAL, INC.
21820 76th Ave. S.
Kent, WA 98032

Re: HQ 957522 revoked; non-medical use latex gloves.

DEAR MR. JOHNSON:

This is in reference to Headquarters Ruling (HQ) 957522, dated May 24, 1995, and issued to the Port Director, of Customs, Seattle, Washington, concerning protest 3001-94-100631, which you filed on behalf of Lyons Safety Inc., on October 24, 1994, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In that ruling it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical."

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered HQs 951033 dated June 8, 1992, 951586, dated June 23, 1992, 957561, dated May 24, 1995, and 961270, dated April 15, 1998. This ruling revokes HQ 957522. HQs 964837, 964838, and 964839 of this date, revoke HQs 951033 and 951586, 957561 and 961270, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon protests as to past importations.

Facts:

The articles under consideration are disposable, unsterilized latex rubber gloves imported in bulk from Malaysia and repackaged in dispenser boxes of 100 gloves which are marked for non-medical use. The gloves are sold to electronic, pharmaceutical, chemical and food processing industries but are not sold for surgical or medical use.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpretation of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: Gloves:
4015.11.00	Surgical and medical
* * * * *	
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

> When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (*e.g.*, the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); *see also Lenox Coll.*, 20 C.I.T., Slip Op. 96–30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

The EN describes gloves of subheading 4015.11 as "thin, highly tear-resistant articles." In fact, in the United States, such gloves undergo stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to a source at the Food and Drug Administration ("FDA"), industrial use gloves are medical use gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). We now believe that the quality difference in these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Furthermore, the principal use of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA. (21 CFR 801 *et seq*.). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a "use" provision to merchandise, the controlling regulatory scheme is indeed relevant.

Lastly, application of the *Carborundum* factors all mandate classification of gloves imported for and labeled for non-medical use in subheading 4015.19.10, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless". The general physical characteristics of industrial use gloves include leaks, tears or pinholes not found in medical use gloves. The recognition in the trade of industrial use, the expectation of the ultimate purchasers for industrial use, the channels of trade to industrial, cosmetic and food handler industries, the environment of the sale including the label stating that the gloves are only for industrial use or for non-medical use, and the actual usage of the merchandise in cosmetic, electronic, food handling and other industries, all point to principal use in a non-medical setting. Also, there is an extra expense in testing medical use gloves so it would not be practical to use medical use gloves as industrial gloves and it is for industrial use gloves to be used for medical purposes due to the leaky or torn nature of the glove.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless."

HQ 957522 is revoked. Although there is no consequence of this action with regards to protest 3001-94-100631, future imports occurring on or after this ruling's effective date should be classified consistent with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

CLA-2 RR:CR:GC 964837 AM
Category: Classification
Tariff No. 4015.19.10

MR. TIM MCMILLEN
ANSELL EDMONT INDUSTRIAL INC.
Box 6000
Cochocton, OH 43812-6000

Re: HQ 951033 and HQ 951586 revoked; non-medical use latex gloves.

DEAR MR. MCMILLEN:

This is in reference to Headquarters Rulings (HQs) 951033 and 951586, dated June 8, 1992, and June 23, 1992, respectively, and issued to the Port Director, of Customs, Cleveland Ohio, concerning protest 4103-91-000187 which you filed on June 13, 1991, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In those rulings it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical."

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered 957522 and 957561, dated May 24, 1995, and 961270, dated April 15, 1998. This ruling revokes HQ 951033 and HQ 951586. HQs 964836, 964838, and 964839 of this date, revoke HQs 957522, 957561, and 961270, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon protests as to past importations.

Facts:

The articles under consideration are two styles of disposable latex gloves. One style is ambidextrous, powdered for easy on-off, comes in 9-1/2 inch length and .005 inch thickness and comes in two sizes. It is packaged in boxes of 100 and in polybags of 1000. According to the rulings, the sample box provided has a stick-on label bearing the legend "FOR INDUSTRIAL USE." Advertising literature provided specifies a number of uses for the gloves and states that they are for use "[a]nywhere you need a light duty liquidproof glove." Information on the box specifies that the gloves are made from natural latex for greater finger dexterity extra sensitivity and tactility, that they do not cause hand fatigue, that they have snug rolled cuffs for greater protection and that they keep hands cool and comfortable.

A second style of the latex gloves is made for both left hand and right hand application. They come in a 12 inch length, are .009 inches thick, have an anti-slip bisque finish and come in half-sizes ranging from 6 to 9. Some of the gloves are packaged in an individual heat-sealed polybag and some are packaged 50 right-hand or left-hand gloves per heat-sealed polybag. Both of the packages are subsequently packaged in "master" heat sealed polybags which, in turn, are packaged so that there are 200 pairs per case. These gloves are noted to provide a combination of comfort, sensitivity and fit, offer a secure grip for both wet and dry applications and to provide one of the industry's lowest particulate levels for use in a clean room environment.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpretation of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: Gloves:
4015.11.00	Surgical and medical
* * * * *	
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

> When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (*e.g.*, the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); *see also Lenox Coll.*, 20 C.I.T., Slip Op. 96–30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

The EN describes gloves of subheading 4015.11 as "thin, highly tear-resistant articles." In fact, in the United States, such gloves undergo stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to a source at the Food and Drug Administration ("FDA"), industrial use gloves are medical use gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). We now believe that the quality difference in these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Furthermore, the principal use of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA. (21 CFR 801 *et seq*.). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a "use" provision to merchandise, the controlling regulatory scheme is indeed relevant.

Lastly, application of the *Carborundum* factors all mandate classification of gloves imported for and labeled for non-medical use in subheading 4015.19.10, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless". The general physical characteristics of industrial use gloves include leaks, tears or pinholes not found in medical use gloves. The recognition in the trade of industrial use, the expectation of the ultimate purchasers for industrial use, the channels of trade to industrial, cosmetic and food handler industries, the environment of the sale including the label stating that the gloves are only for industrial use or for non-medical use, and the actual usage of the merchandise in cosmetic, electronic, food handling and other industries, all point to principal use in a non-medical setting. Also, there is an extra expense in testing medical use gloves so it would not be practical to use medical use gloves as industrial gloves and it is for industrial use gloves to be used for medical purposes due to the leaky or torn nature of the glove.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless."

HQs 951033 and 951586 are revoked. Although there is no consequence of this action with regards to protest 4103-91-000187, future imports occurring on or after this ruling's effective date should be classified consistent with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

CLA-2 RR:CR:GC 964838 AM
Category: Classification
Tarriff No. 4015.19.10

MR. DONALD J. UNGER
BARNES, RICHARDSON & COLBURN
200 East Randolph Drive
Chicago, IL 60601

Re: HQ 957561 revoked; non-medical use latex gloves.

DEAR MR. UNGER:

This is in reference to Headquarters Ruling (HQ) 957561, dated May 24, 1995, and issued to the Port Director, of Customs, Chicago, Illinois, concerning protest 3901-94-102358, which you filed on behalf of Magid Glove on October 20, 1994, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In those rulings it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical."

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered HQs, 951033 and 951586, dated June 8, 1992, and June 23, 1992, respectively, 957522 and 957561, both dated May 24, 1995, and 961270, dated April 15, 1998. This ruling revokes HQ 957561. HQs 964836, 964837, and 964839 of this date, revoke HQs 957522, 951033 and 951586, and 961270, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon protests as to past importations.

Facts:

The articles under consideration disposable unsterilized latex rubber gloves produced in Malaysia and packaged in dispenser boxes of 100 gloves which are marked "For Industrial Use Only." The gloves are sold to electronic, pharmaceutical, chemical and food processing industries but are not sold for surgical or medical use.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding

System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpretation of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: Gloves:
4015.11.00	Surgical and medical
* * * * *	
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

> When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (*e.g.*, the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); *see also Lenox Coll.*, 20 C.I.T., Slip Op. 96–30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

The EN describes gloves of subheading 4015.11 as "thin, highly tear-resistant articles." In fact, in the United States, such gloves undergo stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to a source at the Food and Drug Administration ("FDA"), industrial use gloves are medical use

gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). We now believe that the quality difference in these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Furthermore, the principal use of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA. (21 CFR 801 *et seq*.). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a "use" provision to merchandise, the controlling regulatory scheme is indeed relevant.

Lastly, application of the *Carborundum* factors all mandate classification of gloves imported for and labeled for non-medical use in subheading 4015.19.10, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless". The general physical characteristics of industrial use gloves include leaks, tears or pinholes not found in medical use gloves. The recognition in the trade of industrial use, the expectation of the ultimate purchasers for industrial use, the channels of trade to industrial, cosmetic and food handler industries, the environment of the sale including the label stating that the gloves are only for industrial use or for non-medical use, and the actual usage of the merchandise in cosmetic, electronic, food handling and other industries, all point to principal use in a non-medical setting. Also, there is an extra expense in testing medical use gloves so it would not be practical to use medical use gloves as industrial gloves and it is for industrial use gloves to be used for medical purposes due to the leaky or torn nature of the glove.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless."

HQ 957561 is revoked. Although there is no consequence of this action with regards to protest 3901-94-102358, future imports occurring on or after this ruling's effective date should be classified consistent with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

CLA-2 RR:CR:GC 964839 AM
Category: Classification
Tariff No. 4015.19.10

SST INTERNATIONAL INC.
10415 S. La Cienega Blvd.
Los Angeles, CA 90045

Re: HQ 961270 revoked; non-medical use latex gloves.

DEAR SIR OR MADAM:

This is in reference to Headquarters Ruling (HQ) 961270, dated April 15, 1998, and issued to the Port Director, of Customs, Los Angeles/Long Beach, California, concerning protest 2704-97-102641, which you filed on behalf of Boyd Medical and Safety, on August 6, 1997, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In that ruling it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical."

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered HQs 951033, dated June 8, 1992, 951586, dated June 23, 1992, 957522 and 957561, both dated May 24, 1995. This ruling revokes HQ 961270. HQs 964836, 964837 and 964838 of this date, revoke HQs 957522, 951033 and 951586, and 957561, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon the protests as to past importations.

Facts:

The articles under consideration disposable, pre-powdered, unsterilized, ambidextrous latex rubber gloves produced in Malaysia and packaged in dispenser boxes of 100 gloves. The gloves are sold to electronic, pharmaceutical, chemical and food processing industries but are not sold for surgical or medical use.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpretation of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:

	Gloves:	
4015.11.00	Surgical and medical	
* * * * *		
4015.19	Other:	
4015.19.10		Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

> When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (*e.g.*, the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); *see also Lenox Coll.*, 20 C.I.T., Slip Op. 96–30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

The EN describes gloves of subheading 4015.11 as "thin, highly tear-resistant articles." In fact, in the United States, such gloves undergo stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to a source at the Food and Drug Administration ("FDA"), industrial use gloves are medical use gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). We now believe that the quality difference in these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Furthermore, the principal use of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA. (21 CFR 801 *et seq*.). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a "use" provision to merchandise, the controlling regulatory scheme is indeed relevant.

Lastly, application of the *Carborundum* factors all mandate classification of gloves imported for and labeled for non-medical use in subheading 4015.19.10, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for

all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless". The general physical characteristics of industrial use gloves include leaks, tears or pinholes not found in medical use gloves. The recognition in the trade of industrial use, the expectation of the ultimate purchasers for industrial use, the channels of trade to industrial, cosmetic and food handler industries, the environment of the sale including the label stating that the gloves are only for industrial use or for non-medical use, and the actual usage of the merchandise in cosmetic, electronic, food handling and other industries, all point to principal use in a non-medical setting. Also, there is an extra expense in testing medical use gloves so it would not be practical to use medical use gloves as industrial gloves and it is for industrial use gloves to be used for medical purposes due to the leaky or torn nature of the glove.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless."

HQ 961270 is revoked. Although there is no consequence of this action with regards to protest 2704-97-102641, future imports occurring on or after this ruling's effective date should be classified consistent with this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION AND MODIFICATION OF CUSTOMS RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NAPPED BED LINEN

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and treatment relating to the classification of a napped bed linen.

SUMMARY: Pursuant to Section 625 (c), Tariff Act of 1930, as amended, (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs intends to revoke four ruling letters and modify one ruling letter pertaining to the tariff classification of napped bed linen. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 13, 2001.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927-1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke NY Ruling Letter ("NY") D87088, dated March 2, 1999; NY D87989, dated March 2, 1999; NY E81441, dated May 19, 1999; and NY F89392, dated August 2, 2000, and in addition modify NY F83310, dated March 15, 2000, pertaining to the classification of various bed linen with a slight level of napping Although in this notice Customs is specifically referring to these five subject ruling letters, this notice covers any rulings on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the

Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

The subject bed linen was originally classified in heading 6302 of the Harmonized Tariff Schedule Annotated ("HTSUSA"), as not napped bed linen. However, upon further review of this line of merchandise it was determined that those bed linens which have slight brushing or napping should be classified accordingly in the Harmonized Tariff Schedule.

Statistical Note 1(k), Chapter 52 to the HTSUSA which defines napping does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather the note requires that "*some* of the fibers" are raised. The items under review are described as various bed linens which have undergone a brushing process to produce a slight level of raised fibers on the surface of the linen. The subject merchandise was originally classified as "not napped" due to the low level of brushing on the fabric, however, this classification was in error.

The tariff does not require that a set amount of fibers must be raised in order to qualify as a napped product for classification purposes and therefore the U.S. Customs Service will not subjectively determine levels of napping which must be fulfilled for products to be classified as napped. While the napping on the subject merchandise is slight, the level of napping is still detectable and has been accomplished through the brushing process which is necessary for the formation of all napping. Therefore, it is the determination of the Office of Regulations & Rulings, that the subject cotton, printed, napped bed linen is classifiable in subheading 6302.21.70, HTSUS, and in subheading 6302.31.70, HTSUS for cotton, napped bed linen.

In NY F89392, dated August 2, 2000, concerning the tariff classification of bed linen from Portugal, the products were classified under 6302.21.90, HTSUSA, as cotton, printed, not napped bed linens. In NY D87088, dated May 2, 1999, and also in NY D87089, dated March 2, 1999, concerning the tariff classification of bed linen from Portugal, the products were erroneously classified under subheading 6302.21.90, HTSUSA, as printed not napped cotton bed linen. In NY E81441, dated May 19, 1999, concerning the tariff classification of bed linen from Portugal, the products were erroneously classified under 6302.21.90, HTSUSA, as cotton, printed, not napped bed linen. In NY F83310, dated March 15, 2000, concerning the tariff classification of bed linen from Spain, some products were erroneously classified under 6302.21.90, HTSUSA, as cotton, printed, not napped bed linen. NY F89392 is set forth as "Attachment A" to this document. NY D87099 is set forth as "Attachment B" to this document. NY D87089 is set

forth as "Attachment C" to this document. NY E81441 is set forth as "Attachment D" to this document. NY F83310 is set forth as "Attachment E" to this document. The correct classification for these products should be under subheading 6302.21.70, HTSUSA as printed, cotton, napped bed linen and under 6302.31.70 as cotton, napped bed linen.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY F89392, NY D87088, NY D87089, NY E81441 and modify NY F83310 as well as any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarter Rulings ("HQ") 964820 (*see* "Attachment F" to this document); HQ 964821 (*see* "Attachment G" to this document); HQ 964822 (*see* "Attachment H" to this document); HQ 964823 (*see* "Attachment I" to this document); and HQ 964819 (*see* "Attachment J" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 21, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

August 2, 2000
CLA-2-63:RR:NC:TA:349 F89392
Category: Classification
Tariff No. 6302.21.9010; 6302.21.9020

MR. SAID ORDAZMORENO
DANZAS CORPORATION
80 Broad Street, 9th Floor
New York, NY 10004

Re: The tariff classification of a pillowcase and sheets from Portugal.

DEAR MR. ORDAZMORENO:

In your letter dated July 10, 2000, you requested a tariff classification ruling on behalf of Notra Home Fashion.

You submitted a sample of a pillowcase. The submitted sample is made from 50 percent polyester and 50 percent cotton woven fabric. However, you indicate that the actual product will be made from a chief weight cotton fabric. The sample is

printed with a leaf pattern. It sewn along two edges and has a slit opening at one end. You note that you will also import sheets but samples were not provided. We assume that like the pillowcase, the sheets do not contain any embroidery, lace, braid, edging, trimming, piping or applique work. As requested the pillowcase is being returned.

In your letter you refer to the pillowcase as brushed or napped. Statistical Note 1(k) of Chapter 52, Harmonized Tariff Schedule of the United States (HTS), defines the term napped as meaning "fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc., are typical fabrics with a nap." Both sides of the submitted sample appear to have been lightly brushed. Although the hand has been softened somewhat by the brushing, a fibrous surface is not readily apparent. The subject pillowcase and sheets are considered "not napped" for tariff purposes.

The applicable subheading for the pillowcase will be 6302.21.9010, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped… pillowcases, other than bolster cases.

The applicable subheading for the sheets will be 6302.21.9020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped… sheets.

The general rate of duty for the above subheadings would be 7.1 percent *ad valorem*. However, the United States Trade Representative has imposed a 100 percent *ad valorem* rate of duty on specific articles that are the products of certain member States of the European Communities (EC). Bed linen from Portugal classified under subheading 6302.21.90, HTS, is subject to this 100 percent *ad valorem* rate of duty under 9903.08.13, HTS. For further information, refer to the Customs Web Site at www.customs.gov.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-637-7078.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

March 2, 1999
CLA-2-63:RR:NC:TA:349 D87088
Category: Classification
Tariff No. 6302.21.9010; 6302.21.9020

MS. KATHY BRENNAN
EDDIE BAUER INC.
P.O. Box 97000
Redmond, WA 98073-9700

Re: The tariff classification of sheet sets and pillowcases from Portugal.

DEAR MS. BRENNAN:

In your letter dated February 3, 1999, you requested a tariff classification ruling.

You submitted a sample of a sheet set, referred to as the "Antique Mini Floral Queen Sized Sheet Set" item number 077-6906. The set consists of a flat sheet, fitted sheet and two pillowcases. They are made from a 100 percent cotton woven fabric that has been printed with a floral design. The flat sheet is hemmed on all four sides and the fitted sheet is fully elasticized. The sheet set will also be imported in twin size (item # 077-6904), full size (item # 077-6905) and king size (item # 077-6907). In addition to those contained in the sets, individual pillowcases will be imported separately in standard size (item # 077-6908) and king size (item # 077-6909). The sheet sets do not meet the criteria for "goods put up in sets for retail sale" and will be classified as if imported separately. Your sample will be returned as requested.

In your letter you refer to the cotton fabric as being napped on the nonprinted side. Statistical Note 1(k) of Chapter 52, Harmonized Tariff Schedule of the United States, defines the term napped as meaning "fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc., are typical fabrics with a nap." The back of the submitted fabric appears to have been lightly brushed. Although the hand has been softened somewhat by the brushing, a fibrous surface is not readily apparent. The submitted sheets and pillowcases are considered "not napped" for tariff purposes.

The applicable subheading for the pillowcases will be 6302.21.9010, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... pillowcases, other than bolster cases. The rate of duty will be 7.2 percent *ad valorem*.

The applicable subheading for flat and fitted sheets will be 6302.21.9020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... sheets. The duty rate will be 7.2 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-637-7078.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

March 2, 1999
CLA-2-63:RR:NC:TA:349 D87089
Category: Classification
Tariff No. 6302.21.9010; 6302.21.9020; 6302.21.9050

MS. KATHY BRENNAN
EDDIE BAUER INC.
P.O. Box 97000
Redmond, WA 98073-9700

Re: The tariff classification of sheet sets, comforter covers and pillowcases from Portugal.

DEAR MS. BRENNAN:

In your letter dated February 4, 1999, you requested a tariff classification ruling.

You submitted a sample of a sheet set, referred to as the "Wildflower Queen Sized Sheet Set" item number 077-7331. The set consists of a flat sheet, fitted sheet and two pillowcases. They are made from a 100 percent cotton woven fabric that has been printed with a floral design. You state that this fabric will also be used for the comforter cover. The flat sheet is hemmed on all four sides and the fitted sheet is fully elasticized. The sheet set will also be imported in twin size (item # 077-7329), full size (item # 077-7330) and king size (item # 077-7332). In addition to those contained in the sets, individual pillowcases will be imported separately in standard size (item # 077-7335) and king size (item # 077-7336). A sample of the comforter cover was not submitted and it is assumed that the cover does not contain any embellishments such as embroidery, lace, braid, edging, trimming, piping or applique work. The comforter covers will be imported in twin size (077-7325), full size (077-7326), queen size (077-7327) and king size (077-7328). The sheet sets do not meet the criteria for "goods put up in sets for retail sale" and will be classified as if imported separately. Your sample will be returned as requested.

In your letter you refer to the cotton fabric as being napped on the nonprinted side. Statistical Note 1(k) of Chapter 52, Harmonized Tariff Schedule of the United States, defines the term napped as meaning "fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc., are typical fabrics with a nap." The back of the submitted fabric appears to have been lightly brushed. Although the hand has been softened somewhat by the brushing, a fibrous surface is not readily apparent. The submitted sheets and pillowcases are considered "not napped" for tariff purposes.

The applicable subheading for the pillowcases will be 6302.21.9010, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... pillowcases, other than bolster cases. The rate of duty will be 7.2 percent *ad valorem*.

The applicable subheading for flat and fitted sheets will be 6302.21.9020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... sheets. The duty rate will be 7.2 percent *ad valorem*.

The applicable subheading for the comforter covers will be 6302.21.9050, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... other. The duty rate will be 7.2 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-637-7078.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

May 19, 1999
CLA-2-63:RR:NC:TA:349 E81441
Category: Classification
Tariff No. 6302.21.9010; 6302.21.9020; 6302.21.9050

MS. KATHY BRENNAN
EDDIE BAUER INC.
P.O. Box 97000
Redmond, WA 98073-9700

Re: The tariff classification of flat sheets, fitted sheets, sheet sets, comforter covers and pillowcases from Portugal.

DEAR MS. BRENNAN:

In your letter dated April 27, 1999, you requested a tariff classification ruling.

You submitted a swatch of printed percale fabric that is representative of the fabrics that will be used to make the sheets, pillowcases, comforter covers and sheet sets. The 100 percent cotton woven fabric is stated to be identical to the production fabric differing only in the printed patterns. The flat and fitted sheets will be imported in twin, full, queen and king sizes, while the pillowcases will be imported in standard and king sizes. The Floral Flat sheets will be referred to as item numbers 077-2817, 077-2818, 077-2819 and 077-2820. The Floral Fitted sheets will be referred to as item numbers 077-2821, 077-2822, 077-2823 and 077-2824 and the Floral Pillowcases as 077-2825 and 077-2826. The Stripe Flat sheets will be imported as item numbers 077-7700, 077-9926, 077-9927 and 077-9928. The Stripe Fitted sheets will be imported as item numbers 077-9929, 077-9930, 077-9931 and 077-9932 and the Stripe Pillowcases as 077-9933 and 077-9934.

The Green Floral sheet set will consists of a flat sheet, fitted sheet and two pillowcases. The sheet set will also be imported in twin size (item # 077-6904), full size (item # 077-6905) queen size (item # 077-6906) and king size (item # 077-6907). In addition to those contained in the sets, individual Green Floral pillowcases will be imported separately in standard size (item # 077-6908) and king size (item # 077-6909). The Floral/Madras comforter covers will be imported in twin size (077-3356), full size (077-3357), queen size (077-3358) and king size (077-3359). You have indicated that the sheets, pillowcases, comforter covers and sheet sets do not contain any embellishments such as embroidery, lace, braid, edging, trimming, piping or applique work. As the components of the sheet sets are classifiable within the same subheading, the sheet sets do not meet the criteria for "goods put up in sets for retail sale" and will be classified as if imported separately. Your sample will be returned as requested.

In your letter you refer to the cotton fabric as being napped on both sides. Statistical Note 1(k) of Chapter 52, Harmonized Tariff Schedule of the United States, defines the term napped as meaning "fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc., are typical fabrics with a nap." The front and back of the submitted fabric appears to have been lightly brushed. Although the hand has been softened somewhat by the brushing, a fibrous surface is not readily apparent. The subject sheet sets, comforter covers, sheets and pillowcases are considered "not napped" for tariff purposes.

The applicable subheading for the pillowcases will be 6302.21.9010, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... pillowcases, other than bolster cases.

The applicable subheading for flat and fitted sheets will be 6302.21.9020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... sheets.

The applicable subheading for the comforter covers will be 6302.21.9050, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped... other.

The general rate of duty for the above subheadings would be 7.2 percent *ad valorem*. However, the United States Trade Representative has imposed a 100 percent *ad valorem* rate of duty on specific articles that are the products of certain member States of the European Communities (EC). Bed linen from Portugal classified under subheading 6302.21.90, HTS, is subject to this 100 percent *ad valorem* rate of duty. For further information, refer to the Customs Web Site at www.customs.ustreas.gov.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-637-7078.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT E]

March 15, 2000
CLA-2-63:RR:NC:TA:349 F83310
Category: Classification
Tariff No. 6302.21.7020; 6302.21.9020; 6302.31.9020

MR. JAMES O. CRAWFORD
JOHN S. JAMES CO.
P.O. Box 1616
Wilmington, NC 28401

Re: The tariff classification of bed linen from Spain.

DEAR MR. CRAWFORD:

In your letter dated February 14, 2000, you requested a tariff classification ruling on behalf of Induter USA Inc.

You submitted samples of four flat sheets and samples of fabrics in various stages of manufacture. All of the samples are made from 100 percent cotton woven fabrics. The item marked "Sample Ref # 1" is a napped and printed sheet. Those marked "Sample Ref # 5" and "Sample Ref # 9" are printed and not napped. "Sample Ref # 15" is not napped and not printed. None of the samples contain any embroidery, lace, braid, edging, trimming, piping or applique work.

In addition to the submitted samples, you have also supplied information concerning the manufacture of these sheets and the types of machines used in some of the stages of processing. It is the supplier's position that all of the sheets are napped. All of the submitted sheets have gone through a brushing or buffing process. The sheet marked "Sample Ref # 1" has a fibrous surface and is considered a napped fabric. The three other sheet samples do not present this type of surface and are not considered napped. Both technical literature and the Statistical Notes to the Harmonized Tariff Schedule of the United States (HTS), indicate that for a fabric to be known as "napped" it must have a substantial portion of at least one surface covered with raised fibers. Fairchild's Dictionary of Textiles

(1979), in discussing nap, states among other things, that in napped fabrics the "interlacings between the warp and filling threads are covered to a great degree by nap…." Similarly, The Modern Textile and Apparel Dictionary (1973), in defining nap, states that it "covers up to a great degree the interlacing between the warp and filling threads."

Statistical Note 1(k) of Chapter 52, HTS, defines the term napped as meaning "fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc., are typical fabrics with a nap." The processing of "Sample Ref # 1" has raised a significant amount of fibers, while the processing of the other three sheets has raised only a small amount of fibers. Although the hand of these three sheets has been softened somewhat by the brushing or buffing, a fibrous surface is not readily apparent. The sheets marked "Sample Ref # 5", "Sample Ref # 9" and "Sample Ref # 15" are considered "not napped" for tariff purposes.

The applicable subheading for the sheet marked "Sample Ref # 1" will be 6302.21.7020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: napped… sheets. The rate of duty will be 4.5 percent *ad valorem*.

The applicable subheading for the sheet marked "Sample Ref # 15" will be 6302.31.9020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of cotton: other: not napped… sheets. The rate of duty will be 7.1 percent *ad valorem*.

The applicable subheading for the sheets marked "Sample Ref # 5" and "Sample Ref # 9" will be 6302.21.9020, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other: not napped… sheets. The general rate of duty for this subheading would be 7.1 percent *ad valorem*. However, the United States Trade Representative has imposed a 100 percent *ad valorem* rate of duty on specific articles that are the products of certain member States of the European Communities (EC). Bed linen from Spain classified under subheading 6302,21.90, HTS, is subject to this 100 percent *ad valorem* rate of duty. For further information, refer to the Customs Web Site at www.customs.gov.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-637-7078.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

CLA-2 RR:CR:TE 964820 mbg
Category: Classification
Tariff No. 6302.21.7010; 6302.21.7020

MR. SAID ORDAZMORENO
DANZAS CORPORATION
80 Broad Street, 9th Floor
New York, NY 10004

Re: Classification of Napped Bed Linen from Portugal; Revocation of NY F89392.

DEAR MR. ORDAZMORENO:

On August 2, 2000, Customs issued New York Ruling Letter ("NY") NY F89392 to your company regarding the tariff classification of bed linen which was originally classified as "not napped" under heading 6302 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the bed linen was erroneously classified. The correct classification for the product should be under heading 6302, HTSUSA, as napped bed linen. NY F89392 is hereby revoked for the reasons set forth below.

Facts:

You submitted a sample of a pillowcase, The submitted sample is made from 50 percent polyester and 50 percent cotton woven fabric. However, you indicate that the actual product will be made from a chief weight cotton fabric. The sample is printed with a leaf pattern. It is sewn along two edges and has a slit opening at one end. You note that you will also import sheets but samples were not provided. We assume that like the pillowcase, the sheets do not contain any embroidery, lace, braid, edging, trimming, piping or applique work.

For tariff classification purposes, the difference between napped and not napped bed linen is less than 3 percent *ad valorem*, however, not napped printed bed linen from the European Union is subject to a 100 percent *ad valorem* rate of duty pursuant to trade sanctions imposed by the United States Trade Representative.

Upon review, the classification applied by Customs in NY F89392 was incorrect. In NY F89392, the flat and fitted sheets were classified under subheading 6302.21.9020, HTSUSA, as "Other bed linen, printed: of cotton: not napped: sheets" and the pillowcases were classified under subheading 6302.21.9010, HTSUSA, as "Other bed linen, printed: of cotton: not napped: pillowcases."

Issue:

What is the proper classification for the submitted bed linen?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN state in regard to heading 6302, HTSUSA, that "bed linen" includes "sheets, pillowcases, bolster cases, eiderdown cases and mattress covers." As bed linen is *eo nomine* provided for within heading 6302, HTSUSA, classification within this heading is proper.

Under the terms of the HTSUSA, the classification of bed linen depends upon the fiber content; whether printed or not; whether napped or not; whether any component contains embroidery, trimming, lace, etc., and whether the sheet set constitutes a "retail" set or not. The determinative issue in this case is whether the subject sheets are considered napped or not napped for tariff classification purposes and specifically what level or amount of napping is required.

Statistical Note 1(k) to Chapter 52 of the HTSUSA which provides for cotton states:

> The term "*napped*" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics.

Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.

Determination of the tariff classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the textile industry. We note the following definitions:

Nap– A downy surface given to a cloth when part of the fiber is raised from the basic structure. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napping– A finishing process that raises the surface fibers of a fabric by means of passage over rapidly revolving cylinders covered with metal points or teasel burrs. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napped Fabrics– Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics, in that they do not have extra threads incorporated in the textile.

Napping is considered a FINISHING process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. ENCYCLOPEDIA OF TEXTILES, Judith Jerde, 157 (1992).

Napped-Finished Goods– These may be of a single or double finish, *slight or heavy*. Single finish occurs when one side of the goods is napped; double finish fabric has both sides of the material napped.

A slight finish occurs when the napped cloth is not as high in protruding fibers nor as thick when compared with heavy nap. The finish is given to fabrics known for their napped characteristics and for those that can withstand the rigors of the treatment. Certain woolen and cotton cloths receive this type of treatment- baby clothes, blankets, domett, flannel, lining, molleton, silence cloth, etc.

The finish is applied by rollers covered with 1 inch card clothing similar to that used on the fancy roller of the woolen card, or by a roller clothed with teasels.

Some fabrics are given from three to four up to ten or twelve roller treatments to obtain the desired napped effect for the surface finish. The napping may be done in the gray goods states as well as in the regular finishing operations. THE MODERN TEXTILE AND APPAREL DICTIONARY, George E. Linton, 386 (1973).

(emphasis added.)

Neither the Court of International Trade nor its predecessor, the Customs Court, have considered the issue of napping exclusive of making a distinction from pile. However, in *Tilton Textile Corp. v. United States*, 424 F.Supp 1053, 77 Cust. Ct. 27, C.D. 4670 (1976) *aff'd*, 565 F.2d 140 (1977), the court stated:

> [W]hat is termed a "nap" or "napped fabrics" is produced by the raising of *some of the fibers* of the threads which compose the basic fabric, whereas the "pile" on "pile fabrics" must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an "uncut pile."

Tilton at 44. (emphasis added.) The Customs Court acknowledged that only *some of the fibers* must be raised on the fabric. Furthermore, Statistical Note 1(k), Chapter 52 to the HTSUS which defines napping does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather the note requires that "*some* of the fibers" are raised.

The issue of what levels of napping are required in order to be considered "napped" for tariff classification purposes under the HTSUSA was based on the issuance of a ruling under the previous tariff. HQ 080945, dated July 20, 1988, dealt with the issue of whether cotton twill fabric was napped for purposes of the Tariff Schedule of the United States, the predecessor to the current Harmonized Tariff Schedule of the United States. HQ 080945 stated:

> Both technical literature and the Statistical Headnotes to the Tariff Schedules of the United States Annotated ("TSUSA") indicate that for a fabric to be known as *napped* it *must have a substantial portion* of at least one surface covered with raised fibers.

(emphasis added). However, review of Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA, which is the relevant TSUSA note on napped fabrics, reveals that HQ 080945 was in error. The TSUSA note states:

> *Napped*: Fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton fabrics, moleskin, etc., are typical fabrics with a nap.

See Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA. The applicable note under the TSUSA only requires that *some* of the fibers are raised in the fabric to be napped. This is consistent with the HTSUSA as well as the *Tilton* decision.

The tariff does not require that a set amount of fibers must be raised in order to qualify as a napped product for classification purposes and therefore the U.S. Customs Service will not subjectively determine levels of napping which must be fulfilled for products to be classified as napped. While the napping on the subject merchandise is slight, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation of all napping. Therefore, it is the determination of the Office of Regulations & Rulings, that the subject merchandise is considered napped for tariff classification purposes.

Holding:

NY F89392 is hereby revoked.

The subject pillowcases are properly classified in subheading 6302.21.7010, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Pillowcases, other than bolster cases." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 360.

The subject flat and fitted sheets are properly classified in subheading 6302.21.7020, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Sheets." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 361.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

CLA-2 RR:CR:TE 964821 mbg
Category: Classification
Tariff No. 6302.21.7010; 6302.21.7020

MS. KATHY BRENNAN
EDDIE BAUER INC.
P.O. Box 97000
Redmond, WA 98073-9700

Re: Classification of Napped Bed Linen from Portugal; Revocation of NY D87088.

DEAR MS. BRENNAN:

On March 2, 1999, Customs issued New York Ruling Letter ("NY") NY D87088 to your company regarding the tariff classification of bed linen which was originally classified as "not napped" under heading 6302 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the bed linen was erroneously classified. The correct classification for the product should be under heading 6302, HTSUSA, as napped bed linen. NY D87088 is hereby revoked for the reasons set forth below.

Facts:

You submitted a sample of a sheet set, referred to as the "Antique Mini Floral Queen Sized Sheet Set" item number 077-6906. The set consists of a flat sheet, fitted sheet and two pillowcases. They are made from a 100 percent cotton woven fabric that has been printed with a floral design. The flat sheet is hemmed on all four sides and the fitted sheet is fully elasticized. The sheet set will also be imported in twin size (item # 077-6904), full size (item # 077-6905) and king size (item # 077-6907). In addition to those contained in the sets, individual pillowcases will be imported separately in standard size (item # 077-6908) and king size (item # 077-6909).

For tariff classification purposes, the difference between napped and not napped bed linen is less than 3 percent *ad valorem*, however, not napped printed bed linen from the European Union is subject to a 100 percent *ad valorem* rate of duty pursuant to trade sanctions imposed by the United States Trade Representative.

Upon review, the classification applied by Customs in NY D87088 was incorrect. In NY D87088, the flat and fitted sheets were classified under subheading 6302.21.9020, HTSUSA, as "Other bed linen, printed: of cotton: not napped: sheets," and the pillowcases were classified under subheading 6302.21.9010, HTSUSA, as "Other bed linen, printed: of cotton: not napped: pillowcases."

Issue:

What is the proper classification for the submitted bed linen?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN state in regard to heading 6302, HTSUSA, that "bed linen" includes "sheets, pillowcases, bolster cases, eiderdown cases and mattress covers." As bed linen is *eo nomine* provided for within heading 6302, HTSUSA, classification within this heading is proper.

Under the terms of the HTSUSA, the classification of bed linen depends upon the fiber content; whether printed or not; whether napped or not; whether any component contains embroidery, trimming, lace, etc., and whether the sheet set constitutes a "retail" set or not. The determinative issue in this case is whether the subject sheets are considered napped or not napped for tariff classification purposes and specifically what level or amount of napping is required.

Statistical Note 1(k) to Chapter 52 of the HTSUSA which provides for cotton states:

> The term "*napped*" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.

Determination of the tariff classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the textile industry. We note the following definitions:

Nap– A downy surface given to a cloth when part of the fiber is raised from the basic structure. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napping– A finishing process that raises the surface fibers of a fabric by means of passage over rapidly revolving cylinders covered with metal points or teasel burrs. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napped Fabrics– Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics, in that they do not have extra threads incorporated in the textile.

Napping is considered a FINISHING process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. ENCYCLOPEDIA OF TEXTILES, Judith Jerde, 157 (1992).

Napped-Finished Goods– These may be of a single or double finish, *slight or heavy*. Single finish occurs when one side of the goods is napped; double finish fabric has both sides of the material napped.

A slight finish occurs when the napped cloth is not as high in protruding fibers nor as thick when compared with heavy nap. The finish is given to fabrics known for their napped characteristics and for those that can withstand the rigors of the treatment. Certain woolen and

> cotton cloths receive this type of treatment- baby clothes, blankets, domett, flannel, lining, molleton, silence cloth, etc.
>
> The finish is applied by rollers covered with 1 inch card clothing similar to that used on the fancy roller of the woolen card, or by a roller clothed with teasels.
>
> Some fabrics are given from three to four up to ten or twelve roller treatments to obtain the desired napped effect for the surface finish. The napping may be done in the gray goods states as well as in the regular finishing operations. THE MODERN TEXTILE AND APPAREL DICTIONARY, George E. Linton, 386 (1973).

(emphasis added.)

Neither the Court of International Trade nor its predecessor, the Customs Court, have considered the issue of napping exclusive of making a distinction from pile. However, in *Tilton Textile Corp. v. United States*, 424 F.Supp 1053, 77 Cust. Ct. 27, C.D. 4670 (1976) *aff'd*, 565 F.2d 140 (1977), the court stated:

> [W]hat is termed a "nap" or "napped fabrics" is produced by the raising of *some of the fibers* of the threads which compose the basic fabric, whereas the "pile" on "pile fabrics" must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an "uncut pile."

Tilton at 44. (emphasis added.) The Customs Court acknowledged that only *some of the fibers* must be raised on the fabric. Furthermore, Statistical Note 1(k), Chapter 52 to the HTSUS which defines napping does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather the note requires that "*some* of the fibers" are raised.

The issue of what levels of napping are required in order to be considered "napped" for tariff classification purposes under the HTSUSA was based on the issuance of a ruling under the previous tariff. HQ 080945, dated July 20, 1988, dealt with the issue of whether cotton twill fabric was napped for purposes of the Tariff Schedule of the United States, the predecessor to the current Harmonized Tariff Schedule of the United States. HQ 080945 stated:

> Both technical literature and the Statistical Headnotes to the Tariff Schedules of the United States Annotated ("TSUSA") indicate that for a fabric to be known as *napped* it *must have a substantial portion* of at least one surface covered with raised fibers.

(emphasis added). However, review of Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA, which is the relevant TSUSA note on napped fabrics, reveals that HQ 080945 was in error. The TSUSA note states:

> *Napped*: Fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton fabrics, moleskin, etc., are typical fabrics with a nap.

See Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA. The applicable note under the TSUSA only requires that some of the fibers are raised in the fabric to be napped. This is consistent with the HTSUSA as well as the *Tilton* decision.

The tariff does not require that a set amount of fibers must be raised in order to qualify as a napped product for classification purposes and therefore the U.S. Customs Service will not subjectively determine levels of napping which must be fulfilled for products to be classified as napped. While the napping on the subject merchandise is slight, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation

of all napping. Therefore, it is the determination of the Office of Regulations & Rulings, that the subject merchandise is considered napped for tariff classification purposes.

Furthermore, classification of the subject merchandise as a set is inappropriate. GRI 3(b) provides for the classification of goods put up in sets for retail sale. The rule states, in pertinent part, as follows:

> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note (X) (page 5) to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking.

In the instant case, the merchandise consists of products that, if imported separately, are not classifiable in the different headings of the HTSUSA and therefore, consideration of the merchandise as a set is inappropriate.

Holding:

NY D87088 is hereby revoked.

The subject pillowcases are properly classified in subheading 6302.21.7010, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Pillowcases, other than bolster cases." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 360.

The subject flat and fitted sheets are properly classified in subheading 6302.21.7020, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Sheets." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 361.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

CLA-2 RR:CR:TE 964822 mbg
Category: Classification
Tariff No. 6302.21.7010; 6302.21.7020; 6302.21.7050

MS. KATHY BRENNAN
EDDIE BAUER INC.
P.O. Box 97000
Redmond, WA 98073-9700

Re: Classification of Napped Bed Linen from Portugal; Revocation of NY D87089.

DEAR MS. BRENNAN:

On March 2, 1999, Customs issued New York Ruling Letter ("NY") NY D87089 to your company regarding the tariff classification of bed linen which was originally classified as "not napped" under heading 6302 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the bed linen was erroneously classified. The correct classification for the product should be under heading 6302, HTSUSA, as napped bed linen. NY D87089 is hereby revoked for the reasons set forth below.

Facts:

You submitted a sample of a sheet set, referred to as the "Wildflower Queen Sized Sheet Set" item number 077-7331. The set consists of a flat sheet, fitted sheet and two pillowcases. They are made from a 100 percent cotton woven fabric that has been printed with a floral design. You state that this fabric will also be used for the comforter cover. The flat sheet is hemmed on all four sides and the fitted sheet is fully elasticized. The sheet set will also be imported in twin size (item # 077-7329), full size (item # 077-7330) and king size (item # 077-7332). In addition to those contained in the sets, individual pillowcases will be imported separately in standard size (item # 077-7335) and king size (item # 077-7336). A sample of the comforter cover was not submitted and it is assumed that the cover does not contain any embellishments such as embroidery, lace, braid, edging, trimming, piping or applique work. The comforter covers will be imported in twin size (077-7325), full size (077-7326), queen size (077-7327) and king size (077-7328).

For tariff classification purposes, the difference between napped and not napped bed linen is less than 3 percent *ad valorem*, however, not napped printed bed linen from the European Union is subject to a 100 percent *ad valorem* rate of duty pursuant to trade sanctions imposed by the United States Trade Representative.

Upon review, the classification applied by Customs in NY D87088 was incorrect. In NY D87089, the flat and fitted sheets were classified under subheading 6302.21.9020, HTSUSA, as "Other bed linen, printed: of cotton: not napped: sheets;" the pillowcases were classified under subheading 6302.21.9010, HTSUSA, as "Other bed linen, printed: of cotton: not napped: pillowcases;" and the comforter covers were classified under subheading 6302.21.9050, HTSUSA, as "Other bed linen, printed: of cotton: other: not napped: other."

Issue:

What is the proper classification for the submitted bed linen?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN state in regard to heading 6302, HTSUSA, that "bed linen" includes "sheets, pillowcases, bolster cases, eiderdown cases and mattress covers." As bed linen is *eo nomine* provided for within heading 6302, HTSUSA, classification within this heading is proper.

Under the terms of the HTSUSA, the classification of bed linen depends upon the fiber content; whether printed or not; whether napped or not; whether any component contains embroidery, trimming, lace, etc., and whether the sheet set constitutes a "retail" set or not. The determinative issue in this case is whether the subject sheets are considered napped or not napped for tariff classification purposes and specifically what level or amount of napping is required.

Statistical Note 1(k) to Chapter 52 of the HTSUSA which provides for cotton states:

> The term "*napped*" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.

Determination of the tariff classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the textile industry. We note the following definitions:

Nap– A downy surface given to a cloth when part of the fiber is raised from the basic structure. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napping– A finishing process that raises the surface fibers of a fabric by means of passage over rapidly revolving cylinders covered with metal points or teasel burrs. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napped Fabrics– Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics, in that they do not have extra threads incorporated in the textile.

Napping is considered a FINISHING process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. ENCYCLOPEDIA OF TEXTILES, Judith Jerde, 157 (1992).

Napped-Finished Goods– These may be of a single or double finish, *slight or heavy*. Single finish occurs when one side of the goods is napped; double finish fabric has both sides of the material napped.

A slight finish occurs when the napped cloth is not as high in protruding fibers nor as thick when compared with heavy nap. The finish is given to fabrics known for their napped characteristics and for those that can withstand the rigors of the treatment. Certain woolen and cotton cloths receive this type of treatment- baby clothes, blankets, domett, flannel, lining, molleton, silence cloth, etc.

The finish is applied by rollers covered with 1 inch card clothing similar to that used on the fancy roller of the woolen card, or by a roller clothed with teasels.

Some fabrics are given from three to four up to ten or twelve roller treatments to obtain the desired napped effect for the surface

> finish. The napping may be done in the gray goods states as well as in the regular finishing operations. THE MODERN TEXTILE AND APPAREL DICTIONARY, George E. Linton, 386 (1973).

(emphasis added.)

Neither the Court of International Trade nor its predecessor, the Customs Court, have considered the issue of napping exclusive of making a distinction from pile. However, in *Tilton Textile Corp. v. United States*, 424 F.Supp 1053, 77 Cust. Ct. 27, C.D. 4670 (1976) *aff'd*, 565 F.2d 140 (1977), the court stated:

> [W]hat is termed a "nap" or "napped fabrics" is produced by the raising of *some of the fibers* of the threads which compose the basic fabric, whereas the "pile" on "pile fabrics" must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an "uncut pile."

Tilton at 44. (emphasis added.) The Customs Court acknowledged that only *some of the fibers* must be raised on the fabric. Furthermore, Statistical Note 1(k), Chapter 52 to the HTSUS which defines napping does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather the note requires that "*some* of the fibers" are raised.

The issue of what levels of napping are required in order to be considered "napped" for tariff classification purposes under the HTSUSA was based on the issuance of a ruling under the previous tariff. HQ 080945, dated July 20, 1988, dealt with the issue of whether cotton twill fabric was napped for purposes of the Tariff Schedule of the United States, the predecessor to the current Harmonized Tariff Schedule of the United States. HQ 080945 stated:

> Both technical literature and the Statistical Headnotes to the Tariff Schedules of the United States Annotated ("TSUSA") indicate that for a fabric to be known as *napped* it *must have a substantial portion* of at least one surface covered with raised fibers.

(emphasis added). However, review of Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA, which is the relevant TSUSA note on napped fabrics, reveals that HQ 080945 was in error. The TSUSA note states:

> *Napped*: Fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton fabrics, moleskin, etc., are typical fabrics with a nap.

See Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA. The applicable note under the TSUSA only requires that *some* of the fibers are raised in the fabric to be napped. This is consistent with the HTSUSA as well as the *Tilton* decision.

The tariff does not require that a set amount of fibers must be raised in order to qualify as a napped product for classification purposes and therefore the U.S. Customs Service will not subjectively determine levels of napping which must be fulfilled for products to be classified as napped. While the napping on the subject merchandise is slight, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation of all napping. Therefore, it is the determination of the Office of Regulations & Rulings, that the subject merchandise is considered napped for tariff classification purposes.

Furthermore, classification of the subject merchandise as a set is inappropriate. GRI 3(b) provides for the classification of goods put up in sets for retail sale. The rule states, in pertinent part, as follows:

> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note (X) (page 5) to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking.

In the instant case, the merchandise consists of products that, if imported separately, are not classifiable in the different headings of the HTSUSA and therefore, consideration of the merchandise as a set is inappropriate.

Holding:

NY D87089 is hereby revoked.

The subject pillowcases are properly classified in subheading 6302.21.7010, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Pillowcases, other than bolster cases." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 360.

The subject flat and fitted sheets are properly classified in subheading 6302.21.7020, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Sheets." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 361.

The subject comforter covers are properly classified in subheading 6302.21.7050, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Other." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 362.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

CLA-2 RR:CR:TE 964823 mbg
Category: Classification
Tariff No. 6302.21.7010; 6302.21.7020; 6302.21.7050

MS. KATHY BRENNAN
EDDIE BAUER INC.
P.O. Box 97000
Redmond, WA 98073-9700

Re: Classification of Napped Bed Linen from Portugal; Revocation of NY E81441.

DEAR MS. BRENNAN:

On May 19, 1999, Customs issued New York Ruling Letter ("NY") NY E81441 to your company regarding the tariff classification of bed linen which was originally classified as "not napped" under heading 6302 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the bed linen was erroneously classified. The correct classification for the product should be under heading 6302, HTSUSA, as napped bed linen. NY E81441 is hereby revoked for the reasons set forth below.

Facts:

You submitted a swatch of printed percale fabric representative of the fabrics used to make the sheets, pillowcases, comforter covers and sheet sets. The 100 percent cotton woven fabric was stated to be identical to the production fabric differing only in the printed patterns. The flat and fitted sheets are imported in twin, full, queen and king sizes, while the pillowcases are imported in standard and king sizes. The Floral Flat sheets are referred to as item numbers 077-2817, 077-2818, 077-2819 and 077-2820. The Floral Fitted sheets are referred to as item numbers 077-2821, 077-2822, 077-2823 and 077-2824 and the Floral Pillowcases as 077-2825 and 077-2826. The Stripe Flat sheets are imported as item numbers 077-7700, 077-9926, 077-9927 and 077-9928. The Stripe Fitted sheets are imported as item numbers 077-9929, 077-9930, 077-9931 and 077-9932 and the Stripe Pillowcases as 077-9933 and 077-9934.

The Green Floral sheet set consists of a flat sheet, fitted sheet and two pillowcases. The sheet set is imported in twin size (item # 077-6904), full size (item # 077-6905) queen size (item # 077-6906) and king size (item # 077-6907). In addition to those contained in the sets, individual Green Floral pillowcases are imported separately in standard size (item # 077-6908) and king size (item # 077-6909). The Floral/Madras comforter covers are imported in twin size (077-3356), full size (077-3357), queen size (077-3358) and king size (077-3359). You have indicated that the sheets, pillowcases, comforter covers and sheet sets do not contain any embellishments such as embroidery, lace, braid, edging, trimming, piping or applique work.

For tariff classification purposes, the difference between napped and not napped bed linen is less than 3 percent *ad valorem*, however, not napped printed bed linen from the European Union is subject to a 100 percent *ad valorem* rate of duty pursuant to trade sanctions imposed by the United States Trade Representative.

Upon review, the classification applied by Customs in NY E81441 was incorrect. In NY E81441, the flat and fitted sheets were classified under subheading 6302.21.9020, HTSUSA, as "Other bed linen, printed: of cotton: not napped: sheets;" the pillowcases were classified under subheading 6302.21.9010, HTSUSA, as "Other bed linen, printed: of cotton: not napped: pillowcases;" and the comforter covers were classified under subheading 6302.21.9050, HTSUSA, as "Other bed linen, printed: of cotton: other: not napped: other."

Issue:

What is the proper classification for the submitted bed linen?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN state in regard to heading 6302, HTSUSA, that "bed linen" includes "sheets, pillowcases, bolster cases, eiderdown cases and mattress covers." As bed linen is *eo nomine* provided for within heading 6302, HTSUSA, classification within this heading is proper.

Under the terms of the HTSUSA, the classification of bed linen depends upon the fiber content; whether printed or not; whether napped or not; whether any component contains embroidery, trimming, lace, etc., and whether the sheet set constitutes a "retail" set or not. The determinative issue in this case is whether the subject sheets are considered napped or not napped for tariff classification purposes and specifically what level or amount of napping is required.

Statistical Note 1(k) to Chapter 52 of the HTSUSA which provides for cotton states:

> The term "*napped*" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.

Determination of the tariff classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the textile industry. We note the following definitions:

Nap– A downy surface given to a cloth when part of the fiber is raised from the basic structure. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napping– A finishing process that raises the surface fibers of a fabric by means of passage over rapidly revolving cylinders covered with metal points or teasel burrs. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napped Fabrics– Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics, in that they do not have extra threads incorporated in the textile.

Napping is considered a FINISHING process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. ENCYCLOPEDIA OF TEXTILES, Judith Jerde, 157 (1992).

Napped-Finished Goods– These may be of a single or double finish, *slight or heavy*. Single finish occurs when one side of the goods is napped; double finish fabric has both sides of the material napped.

A slight finish occurs when the napped cloth is not as high in protruding fibers nor as thick when compared with heavy nap. The finish is given to fabrics known for their napped characteristics and for those that can withstand the rigors of the treatment. Certain woolen and

> cotton cloths receive this type of treatment- baby clothes, blankets, domett, flannel, lining, molleton, silence cloth, etc.
>
> The finish is applied by rollers covered with 1 inch card clothing similar to that used on the fancy roller of the woolen card, or by a roller clothed with teasels.
>
> Some fabrics are given from three to four up to ten or twelve roller treatments to obtain the desired napped effect for the surface finish. The napping may be done in the gray goods states as well as in the regular finishing operations. THE MODERN TEXTILE AND APPAREL DICTIONARY, George E. Linton, 386 (1973).

(emphasis added.)

Neither the Court of International Trade nor its predecessor, the Customs Court, have considered the issue of napping exclusive of making a distinction from pile. However, in *Tilton Textile Corp. v. United States*, 424 F.Supp 1053, 77 Cust. Ct. 27, C.D. 4670 (1976) *aff'd*, 565 F.2d 140 (1977), the court stated:

> [W]hat is termed a "nap" or "napped fabrics" is produced by the raising of *some of the fibers* of the threads which compose the basic fabric, whereas the "pile" on "pile fabrics" must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an "uncut pile."

Tilton at 44. (emphasis added.) The Customs Court acknowledged that only *some of the fibers* must be raised on the fabric. Furthermore, Statistical Note 1(k), Chapter 52 to the HTSUS which defines napping does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather the note requires that "*some* of the fibers" are raised.

The issue of what levels of napping are required in order to be considered "napped" for tariff classification purposes under the HTSUSA was based on the issuance of a ruling under the previous tariff. HQ 080945, dated July 20, 1988, dealt with the issue of whether cotton twill fabric was napped for purposes of the Tariff Schedule of the United States, the predecessor to the current Harmonized Tariff Schedule of the United States. HQ 080945 stated:

> Both technical literature and the Statistical Headnotes to the Tariff Schedules of the United States Annotated ("TSUSA") indicate that for a fabric to be known as *napped* it *must have a substantial portion* of at least one surface covered with raised fibers.

(emphasis added). However, review of Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA, which is the relevant TSUSA note on napped fabrics, reveals that HQ 080945 was in error. The TSUSA note states:

> *Napped*: Fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton fabrics, moleskin, etc., are typical fabrics with a nap.

See Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA. The applicable note under the TSUSA only requires that *some* of the fibers are raised in the fabric to be napped. This is consistent with the HTSUSA as well as the *Tilton* decision.

The tariff does not require that a set amount of fibers must be raised in order to qualify as a napped product for classification purposes and therefore the U.S. Customs Service will not subjectively determine levels of napping which must be fulfilled for products to be classified as napped. While the napping on the subject merchandise is slight, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation

of all napping. Therefore, it is the determination of the Office of Regulations & Rulings, that the subject merchandise is considered napped for tariff classification purposes.

Furthermore, classification of the subject merchandise as a set is inappropriate. GRI 3(b) provides for the classification of goods put up in sets for retail sale. The rule states, in pertinent part, as follows:

> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note (X) (page 5) to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking.

In the instant case, the merchandise consists of products that, if imported separately, are not classifiable in the different headings of the HTSUSA and therefore, consideration of the merchandise as a set is inappropriate.

Holding:

NY E81441 is hereby revoked.

The subject pillowcases are properly classified in subheading 6302.21.7010, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Pillowcases, other than bolster cases." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 360.

The subject flat and fitted sheets are properly classified in subheading 6302.21.7020, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Sheets." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 361.

The subject comforter covers are properly classified in subheading 6302.21.7050, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Other." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 362.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

CLA-2 RR:CR:TE 964819 mbg
'1Category: Classification
Tariff No. 6302.21.7020; 6302.31.7020

MR. JAMES O. CRAWFORD
JOHN S. JAMES CO.
P.O. Box 1616
Wilmington, NC 28401

Re: Classification of Napped Bed Sheets; Modification of NY F83310.

DEAR MR. CRAWFORD:

On March 15, 2000, Customs issued New York Ruling Letter ("NY") NY F83310 to your company on behalf of your client, Induter USA Inc., regarding the tariff classification of bed linen which was originally classified as "not napped" under heading 6302 of the Harmonized Tariff Schedule Annotated ("HTSUSA"). Upon review, Customs has determined that the bed linen was erroneously classified. The correct classification for the product should be under heading 6302, HTSUSA, as napped bed linen. NY F83310 is hereby modified for the reasons set forth below.

Facts:

Samples of these flat sheets made from 100 percent cotton woven fabrics were erroneously classified. In NY F83310 the samples were described as follows:

Sample Ref # 1 – napped and printed

Sample Ref # 5 – printed and not napped

Sample Ref # 9 – printed and not napped

Sample Ref. # 15 – not napped and not printed.

In addition, NY F83310 states that none of the samples contain any embroidery, lace, braid, edging, trimming, piping or applique work.

For tariff classification purposes, the difference between napped and not napped bed linen is less than 3 percent *ad valorem*, however, not napped printed bed linen from the European Union is subject to a 100 percent *ad valorem* rate of duty pursuant to trade sanctions imposed by the United States Trade Representative.

Upon review the classification applied by Customs in NY F83310 was incorrect. In NY F83310, Sample Ref # 5 and Sample Ref # 9 were classified under subheading 6302.21.9020, HTSUSA, as "Other bed linen: printed: of cotton: not napped: sheets," while Sample Ref # 15 was classified under subheading 6302.31.9020, HTSUSA, as "Other bed linen: of cotton: not napped: sheets" The classification of Sample Ref # 1 in subheading 6302.21.7020, HTSUSA, as "Other bed linen: printed: of cotton: other: napped: sheets" remains unaffected by this ruling.

Issue:

What is the proper classification for the submitted bed sheets?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Explanatory Notes ("EN") to the Harmonized Commodity Description and

Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN state in regard to heading 6302, HTSUSA, that "bed linen" includes "sheets, pillowcases, bolster cases, eiderdown cases and mattress covers." As bed linen is *eo nomine* provided for within heading 6302, HTSUSA, classification within this heading is proper.

Under the terms of the HTSUSA, the classification of bed linen depends upon the fiber content; whether printed or not; whether napped or not; whether any component contains embroidery, trimming, lace, etc., and whether the sheet set constitutes a "retail" set or not. The determinative issue in this case is whether the subject sheets are considered napped or not napped for tariff classification purposes and specifically what level or amount of napping is required.

Statistical Note 1(k) to Chapter 52 of the HTSUSA which provides for cotton states:

> The term "*napped*" means fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton flannel, moleskin, etc. are typical fabrics with a nap.

Determination of the tariff classification of the subject merchandise requires an understanding of terminology which is germane to the issue and utilized by the textile industry. We note the following definitions:

Nap– A downy surface given to a cloth when part of the fiber is raised from the basic structure. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napping– A finishing process that raises the surface fibers of a fabric by means of passage over rapidly revolving cylinders covered with metal points or teasel burrs. DICTIONARY OF FIBER & TEXTILE TECHNOLOGY 100 (1990).

Napped Fabrics– Napped fabrics are processed so that they have either a slight or a dramatic nap on the face or both sides of the fabric. The napping process is accomplished by weaving loosely twisted yarns into the textile, which are then sheared and brushed to create the soft napped surface. Napped fabrics differ from PILE fabrics, in that they do not have extra threads incorporated in the textile.

Napping is considered a FINISHING process and is used on many fibers, including manufactured fibers, silk and wool, as well as specialty fibers such as camel hair and mohair. Occasionally the napped effect does not continuously cover the fabric but is executed in stripes or figures. ENCYCLOPEDIA OF TEXTILES, Judith Jerde, 157 (1992).

Napped-Finished Goods– These may be of a single or double finish, *slight or heavy*. Single finish occurs when one side of the goods is napped; double finish fabric has both sides of the material napped.

A slight finish occurs when the napped cloth is not as high in protruding fibers nor as thick when compared with heavy nap. The finish is given to fabrics known for their napped characteristics and for those that can withstand the rigors of the treatment. Certain woolen and cotton cloths receive this type of treatment- baby clothes, blankets, domett, flannel, lining, molleton, silence cloth, etc.

The finish is applied by rollers covered with 1 inch card clothing similar to that used on the fancy roller of the woolen card, or by a roller clothed with teasels.

Some fabrics are given from three to four up to ten or twelve roller treatments to obtain the desired napped effect for the surface finish. The napping may be done in the gray goods states as well as in the

> regular finishing operations. THE MODERN TEXTILE AND APPAREL DICTIONARY, George E. Linton, 386 (1973).

(emphasis added.)

Neither the Court of International Trade nor its predecessor, the Customs Court, have considered the issue of napping exclusive of making a distinction from pile. However, in *Tilton Textile Corp. v. United States*, 424 F.Supp 1053, 77 Cust. Ct. 27, C.D. 4670 (1976) *aff'd*, 565 F.2d 140 (1977), the court stated:

> [W]hat is termed a "nap" or "napped fabrics" is produced by the raising of *some of the fibers* of the threads which compose the basic fabric, whereas the "pile" on "pile fabrics" must be the raising at intervals, in the form of loops, the entire thickness of extra threads introduced into, but not essential to the basic fabric, which thus form an "uncut pile."

Tilton at 44. (emphasis added.) The Customs Court acknowledged that only *some of the fibers* must be raised on the fabric. Furthermore, Statistical Note 1(k), Chapter 52 to the HTSUS which defines napping does not require that a specified amount of fibers must be raised in order to qualify as a napped good. Rather the note requires that "*some* of the fibers" are raised.

The issue of what levels of napping are required in order to be considered "napped" for tariff classification purposes under the HTSUSA was based on the issuance of a ruling under the previous tariff. HQ 080945, dated July 20, 1988, dealt with the issue of whether cotton twill fabric was napped for purposes of the Tariff Schedule of the United States, the predecessor to the current Harmonized Tariff Schedule of the United States. HQ 080945 stated:

> Both technical literature and the Statistical Headnotes to the Tariff Schedules of the United States Annotated ("TSUSA") indicate that for a fabric to be known as *napped* it *must have a substantial portion* of at least one surface covered with raised fibers.

(emphasis added). However, review of Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA, which is the relevant TSUSA note on napped fabrics, reveals that HQ 080945 was in error. The TSUSA note states:

> *Napped*: Fabrics with a fuzzy, fibrous surface produced by scratching or pricking the surface so that some of the fibers are raised from the body of the yarn. Napped fabrics are not to be confused with pile fabrics. Outing and canton fabrics, moleskin, etc., are typical fabrics with a nap.

See Headnote 1(k), Subpart A, Part 3, Schedule 3 TSUSA. The applicable note under the TSUSA only requires that *some* of the fibers are raised in the fabric to be napped. This is consistent with the HTSUSA as well as the *Tilton* decision.

Research in various textile sources as well as analysis by laboratory experts reveals that the subject merchandise has been subjected to a low level of brushing which has created a napped effect on the bed linen. Upon receipt of this request, Customs subjected the merchandise to further lab analysis and the Customs laboratory confirmed the importer's own lab report which claims the subject merchandise is a woven, napped fabric albeit with a low level of napping evident.

The tariff does not require that a set amount of fibers must be raised in order to qualify as a napped product for classification purposes and therefore the U.S. Customs Service will not subjectively determine levels of napping which must be fulfilled for products to be classified as napped. While the napping on the subject merchandise is slight, the level of napping is still visible to the eye and has been accomplished through the brushing process which is necessary for the formation of all napping. Therefore, it is the determination of the Office of Regulations & Rulings, that the subject merchandise is considered napped for tariff classification purposes.

Holding:

NY F83310 is hereby modified.

Sample Ref # 5 and Sample Ref # 9 are properly classified in subheading 6302.21.7020, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen, printed: Of cotton: Other: Napped: Sheets." The general column one rate of duty is 4 percent *ad valorem*. The textile restraint number is 361.

Sample Ref # 15 is properly classified in subheading 6302.31.7020, HTSUSA, as "Bed Linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Napped: Sheets" The general column one rate of duty is 4.9 percent *ad valorem*. The textile restraint number is 361.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CHEMICAL COMPOUND CAPTISOL™ (SULFOBUTYLETHER ß-CYCLODEXTRIN)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of the chemical compound sulfobutylether ß-cyclodextrin, also known as Captisol™.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling concerning the tariff classification of the chemical compound sulfobutylether ß-cyclodextrin, also known as Captisol™, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 13, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of sulfobutylether ß-cyclodextrin, also known as Captisol™. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) B89369, dated November 25, 1997, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or

decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY B89369, Customs ruled that sulfobutylether ß-cyclodextrin was classified in subheading 3505.10.00, HTSUS, which provides for "[D]extrins and other modified starches (for example, pregelatinized or esterified starches): glues based on starches, or on dextrins or other modified starches: [D]extrins and other modified starches: [O]ther: [O]ther." NY B89369 is set forth as Attachment "A" to this document. It is now Customs position that classification in heading 3505, HTSUS, in NY B89369, is in error. Instead, sulfobutylether ß-cyclodextrin is correctly classified in subheading 2940.00.60, HTSUS, the provision for "[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939: [O]ther."

In the instant product, sulfobutylether ß-cyclodextrin, the introduction of sulfobutyl functionality at one or more of the glucopyranose units in the ß-cyclodextrin structure creates ether linkages at the 2, 3, and 6 positions. Since the parent molecule, ß-cyclodextrin, is a cyclic oligosaccaride, which qualifies as a sugar, creation of ether linkages by the addition of the sulfobutyl groups makes the instant product a sugar ether of heading 2940, HTSUS.

Although the addition of the sulfobutylether functionality in the instant product creates a molecule that is not a "separately defined organic compound" or "a mixture of two or more isomers of the same organic compound," it is a sugar ether of heading 2940 and therefore remains classified in Chapter 29 by action of chapter note 1(c).

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY B89369 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 963287. (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before

taking this action, consideration will be given to any written comments timely received.

Dated: February 27, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

November 25, 1997
CLA-2-35:RR:NC:2:236 B89369
Category: Classification
Tariff No. 3505.10.0092

MR. JOHN W. WHITAKER
O'NEILL & WHITAKER, INC.
1809 Baltimore Ave.
Kansas City, Missouri 64108

Re: The tariff classification of Captisol™, also known as sulfobutylether ß-cyclodextrin, from France.

DEAR MR. WHITAKER:

In your letter dated September 15, 1997, you requested a tariff classification ruling.

The applicable subheading for Captisol™, also known as sulfobutylether ß-cyclodextrin, will be 3505.10.0092, Harmonized Tariff Schedule of the United States, which provides for Dextrins and other modified starches (for example, pregelatinzed or esterified starches); glues based on starches, or on dextrins or other modified starches: Dextrins and other modified starches: Other: Other The rate of duty will be 0.9 cents/kg.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist V. Gualario at 212-466-5744.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 963287 AM
Category: Classification
Tariff No. 2940.00.60

MR. JOHN W. WHITAKER
O'NEILL & WHITAKER, INC.
1809 Baltimore Ave.
Kansas City, MO 64108

Re: NY B89369 revoked; sulfobutylether ß-cyclodextrin (Captisol™).

DEAR MR. WHITAKER:

This is in reference to a New York Ruling Letter (NY) B89369, issued to you, on behalf of Cydex, Inc., on November 25, 1997, by the Director, Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of sulfobutylether ß-cyclodextrin, also known as Captisol™. In NY B89369, this product was classified in subheading 3505.10.00, HTSUS, which provides for "[D]extrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches: [D]extrins and other modified starches."

After careful review by this office, we have determined that the classification set forth in NY B89369 for sulfobutylether ß-cyclodextrin is in error. This ruling revokes NY B89369.

Facts:

Sulfobutylether ß-cyclodextrin has the following molecular formula: C42H70-nO35(C4H8SO3Na)n; where n = the average degree of substitution. The substance is assigned CAS registry number 182410-00-0 (previously assigned CAS # 7585-39-9D). During the synthesis of this substance, 1,4-butane sultone reacts with any of three hydroxyl groups on each of the seven glucopyranose units of the ß-cyclodextrin molecule. The resulting material is a composite mixture having an average degree of substitution of seven. Sulfobutylether ß-cyclodextrin is marketed as Captisol™ which enhances water solubility of other compounds used in the administration of intravenous, intraocular, intramuscular and oral pharmaceuticals so as to decrease local and systemic irritation and reaction in the patient.

Issue:

Whether sulfobutylether ß-cyclodextrin is classified in heading 2940, HTSUS, as ". . . sugar ethers and sugar esters, and their salts, . . .", or in heading 3505, HTSUS, as "[D]extrins and other modified starches".

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding,

provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS headings are relevant to the classification of this product:

2940.00 Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939:

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3505 Dextrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches:

The Chapter Notes to Chapter 29 state, in pertinent part, as follows:

1. Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

(b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27); . . .

(c) The products of headings Nos. 29.36 to 29.39 or the sugar ethers and sugar esters, and their salts, of heading No. 29.40, or the products of heading No. 29.41, whether or not chemically defined;

In NY B89369 this merchandise was incorrectly classified in heading 3505, HTSUS, as a modified starch possibly because the word "dextrin", incorporated into its name, is *eo nomine* provided for in the heading. However, ß-cyclodextrin, the parent molecule of the instant substance, is a sugar of heading 2940, HTSUS, not a dextrin or other modified starch. Thus, ß-cyclodextrin is not described in heading 3505, HTSUS. (*See* New York Ruling Letter B80145, dated January 28, 1997. *See also* Headquarters Ruling Letter 955089, dated February 15, 1994).

In the instant product, sulfobutylether ß-cyclodextrin, the introduction of the sulfobutyl functionality at one or more of the glucopyranose units in the ß-cyclodextrin structure creates ether linkages at the 2, 3, and 6 positions. Since the parent molecule, ß-cyclodextrin, is a cyclic oligosaccaride, which qualifies as a sugar, creation of ether linkages by the addition of the sulfobutyl groups makes the instant product a sugar ether of heading 2940, HTSUS.

Although the addition of the sulfobutylether functionality in the instant product creates a molecule that is not a "separately defined organic compound" or "a mixture of two or more isomers of the same organic compound," it is a sugar ether of heading 2940 and therefore remains classified in Chapter 29 by action of chapter note 1(c), above.

Holding:

Sulfobutylether ß-cyclodextrin is classified in subheading 2940.00.60, HTSUS, as "[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939: [O]ther."

Effect on other Rulings:

NY B89369 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.